

**EXHIBIT 9**

CARL JOINER - 7/21/2022

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON COUNTY

T&W HOLDING COMPANY, LLC; :  
PALAPAS, INC.; AND IT'S FIVE :  
O'CLOCK HERE, LLC; :  
:   
Plaintiffs; :  
:   
v. : Civil Action No. 3:22-cv-7  
:   
CITY OF KEMAH, TEXAS; :  
:   
Defendant. :

\*\*\*\*\*

ORAL AND VIDEO DEPOSITION OF  
CARL JOINER  
JULY 21, 2022  
(VOLUME 1 OF 1)

\*\*\*\*\*

ORAL AND VIDEO DEPOSITION OF CARL JOINER, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 21st of July, 2022, from 1:10 p.m. to 5:06 p.m., before Sheila J. Nieto, CSR, in and for the State of Texas, reported stenographically, at Kemah City Hall, 1401 State Highway 146, Kemah, Texas 77565; pursuant to Notice, the Federal Rules of Civil Procedure, and the provisions stated on the record or attached hereto.

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A P P E A R A N C E S

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ALSO PRESENT:

Mr. Matthew Placek

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1 (Whereupon, the reading of the introduction  
2 into the record, pursuant to Rule 30(b)(5), by the reporter,  
3 was waived by all counsel present.)

4 THE REPORTER: Stipulations on the record?

5 MR. HELFAND: Federal Rules of Civil  
6 Procedure.

7 MR. KILPATRICK: Yeah.

8 THE VIDEOGRAPHER: On the record on July 21,  
9 2022, at 1:10 p.m., beginning Card 1.

10 CARL JOINER,  
11 Having been first duly sworn, testified as follows:

12 E X A M I N A T I O N

13 BY MR. KILPATRICK:

14 Q Good afternoon, Mr. Joiner. I'm Brian Kilpatrick,  
15 and you -- you understand I represent the plaintiffs in this  
16 lawsuit?

17 A Yes.

18 Q Okay. I just want to go over some ground rules.  
19 Have you given your deposition before?

20 A Have I given one?

21 Q Yes.

22 A Yes.

23 Q Okay. Approximately, how many times?

24 A Less than five.

25 Q Less than five?

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1 A Yeah.

2 Q Okay. And what was -- Were you a party in the  
3 lawsuit, in which you gave a dep-- deposition, an attorney --  
4 any of those depositions?

5 A We were suing.

6 Q Okay.

7 A My wife and I.

8 Q Okay. So you understand the -- basically, how it  
9 works. I'm going to ask questions, you -- and you wait 'til  
10 I finish my question before you give an answer, so we have a  
11 clear record.

12 A Yes.

13 Q Okay. And so I'm going to be referring to the  
14 property or Palapas and you understand I'm referring to 606  
15 and 608 6th Street, in Kemah, Texas?

16 A Yes.

17 Q Okay. And when I refer to "defendant," I'm,  
18 obviously, re-- referring to the City of Kemah. And the  
19 plaintiffs are the -- the three plaintiffs in this lawsuit,  
20 T&W Holding Company, LLC, Palapas, Inc., and It's Five  
21 O'Clock --

22 MR. HELFAND: Here.

23 Q -- Here --

24 MR. KILPATRICK: Yeah.

25 Q -- It's 5:00 O'Clock Here, LLC. So I'll re-- I'll

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1 refer to those three as "the plaintiffs." Okay?

2 Now -- Okay. Tell me a little bit about your  
3 background. Where did you -- Where'd you go to college and  
4 any post-graduate studies you have?

5 A Grew up in Kansas. I went to University of Kansas.  
6 Moved to Houston in 1973. Moved to Lake Charles, Louisiana,  
7 in 1977. Came back to the Houston area, in Kingwood, in  
8 1983. Raised our family in Kingwood. In the late '90s, when  
9 our kids were out of high school, we started coming down  
10 here, on the weekends, and, eventually, built a weekend home.  
11 And since then, have sold our Kingwood house and live here  
12 full time.

13 Q Okay. And do you -- do you have any professional  
14 licenses or certifications, designations, things of that  
15 nature?

16 A Yes, I'm a registered architect in Texas.

17 Q Okay. And any other professional certifications or  
18 designations in connection with that?

19 A National Council of Architectural Registration  
20 Board, American Institute of Architects.

21 Q Okay. And so do you -- let -- let's -- how -- how  
22 did you get -- Where did you start in the architecture  
23 practice?

24 A In Houston.

25 Q Okay. Did you work for another company?

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1 A Yes.

2 Q What company was that?

3 A The Klein Partnership.

4 Q Okay. And what -- what type of properties did --  
5 did you des-- or -- or what type of buildings did you design  
6 or develop?

7 A Well, when you're first starting out, you're not  
8 designing anything. You're --

9 Q Okay.

10 A -- maybe, doing -- working drawings or whatever.  
11 But The Klein Partnership is where I started my  
12 apprenticeship. To be a registered architect, you have to  
13 have a five-year degree and then work for three years for a  
14 firm before you can take your exam. So I started at  
15 The Klein Partnership; and they did, mostly, hospitals.

16 Q Okay. And, currently, now, what type of  
17 architecture work do you do?

18 A Well, we've had our firm for forty-five years, but  
19 I'm in the process of selling our firm, and so I'm not active  
20 in the day-to-day business. I'm more of a PR person. But we  
21 had been doing schools and municipal work for over forty  
22 years.

23 Q Okay. What school districts and municipalities  
24 have you worked for?

25 A All the way up to Huntsville, Willis, Humble,

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1 Houston, Cy-Fair, Hitchcock, Clear Creek. There's probably  
2 some more but that's what I know right now.

3 Q Okay. And City of Kemah?

4 A I've done no work for City of Kemah.

5 Q Okay. Who -- What architect-- architecture firm  
6 designed the City Hall building that we're in right now?

7 A Okay. So there's two buildings here. I'm not sure  
8 about over there. This one was done by a local architect  
9 here in Kemah. For some reason, I can't remember his name.

10 Q That's okay. So the other building?

11 A Yeah, I have no idea who did -- That was done back  
12 before my time in Kemah.

13 Q Okay. Is there a company called -- named Duron  
14 Tech?

15 A Yeah, that's a contractor, uh-huh.

16 Q Okay. You -- You don't work for Duron Tech?

17 A No. They're a construction company.

18 Q Okay. Does your architecture firm do work for  
19 them?

20 A They have been the contractor on a number of our  
21 projects that we were the architect on.

22 Q Okay. Okay. So to prepare for your deposition  
23 today, did you review any documents?

24 A No.

25 Q No?



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1 A No.

2 Q Did you talk to anyone? I mean, other than  
3 Mr. Helfand.

4 A No.

5 Q So do you feel like you have a good recollection of  
6 what transpired since you became Mayor through today?

7 A Just let me say this, that I had very little input  
8 on this project --

9 Q On the --

10 A -- when I came.

11 Q On the Palapas?

12 A Yeah, right.

13 Q Okay. So who with the City was kind of, I guess,  
14 you can say, taking the lead on the Palapas project?

15 A Walter Gant.

16 Q Okay.

17 A The City Administrator.

18 Q And so what was -- what was he doing in connection  
19 with the Palapas project and the permits?

20 MR. HELFAND: Objection, calls for  
21 speculation.

22 A Again, that's a day-to-day operation. I'm the  
23 Mayor. I don't get into that.

24 Q Okay. But you -- It -- It was your understanding,  
25 he was taking the lead on the Palapas project.

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1 MR. HELFAND: Objection, calls for  
2 speculation; assumes facts not in evidence.

3 THE WITNESS: Do I need to answer?

4 MR. HELFAND: And, also, vague as to "the  
5 Palapas project."

6 MR. KILPATRICK: Oh. Well, I'm sorry. He --  
7 He referred to it as "the -- the -- the project," so --

8 MR. HELFAND: I know, but he didn't --

9 MR. KILPATRICK: We'll --

10 MR. HELFAND: -- refer to it as "the Palapas  
11 project." And it doesn't matter what he said. Your question  
12 is vague.

13 Again, don't talk to me, just ask another  
14 question or let him ask one that's -- that's bad, either way.

15 Q Don't worry. You -- You can answer the question.

16 So it was your under-- understanding Mr. Gant was  
17 taking the lead with respect to the Palapas property?

18 A Walter Gant is our City Administrator and is over  
19 permitting, public works, and that's why I assume he was in  
20 charge.

21 Q Okay. What about -- Let's see. So did you look  
22 through your emails to prepare for today?

23 A No.

24 Q No. So... Hold on. Okay. So when you became --  
25 You were elected Mayor in May of 2021. Is that correct?

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1 A Correct.

2 Q So after you took office, what were the primary  
3 objectives that you wanted to accomplish as Mayor?

4 A To make sure Maritage project moved forward; get  
5 our Evergreen Memorial Parkway paved; carry out our drainage  
6 study; and meet with Council and work together to develop a  
7 strategic -- strategic plan for Kemah.

8 Q Okay. What about short-term rentals?

9 A That wasn't in my plan for the City.

10 Q Okay. How about with respect to food trucks?

11 A Wasn't in my plan.

12 Q Okay. At some point did the City create a  
13 short-term rental subcommittee?

14 A Yes; I was not on it.

15 Q Okay. Who was on the -- the subcommittee?

16 A You know, I'm -- I'm not totally sure. I just know  
17 that Teresa Vazquez Evans, our -- a Council member, was, I  
18 think, was head of it.

19 Q Okay. And was Walter Gant on the short-term rental  
20 subcommittee?

21 A I'm not sure.

22 Q And what about Brandon Shoaf?

23 A I'm not sure.

24 Q Okay. How many times have you been elected Mayor  
25 of Kemah?

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1 A Three times.

2 Q Okay. And when -- what -- when was the first time  
3 you were elected Mayor?

4 A 2015.

5 Q Okay. And the second?

6 A 2017.

7 Q And the third was 2021?

8 A Uh-huh.

9 Q Okay. Okay. And who -- who were your opponents in  
10 each of those elections?

11 A In 2015, Bob Cummings; 2017, I didn't have an  
12 opponent; and in 2021, it was Terri Gail and Matt Wiggins.

13 Q Okay. Okay. So the -- How would you characterize  
14 the campaign season leading up to the election in 2021,  
15 between you, Terri Gail, and Matt Wiggins?

16 A Contentious.

17 Q Okay. What -- What types of things were happening  
18 that made it contentious?

19 A Negative emails, negative billboards, those types  
20 of things.

21 Q Okay. And out-- out-- outside of the campaign  
22 season, were there any disputes between you and Terri Gail  
23 before y'all were running against each other?

24 A Terri Gail and I were friends and then I supported  
25 someone that she didn't want to support for water board and

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1 from that point on, we hadn't been friends.

2 Q Okay. Now, who was that person?

3 A Ronnie -- Can't remember Ronnie's last name but...

4 Q Okay. That's okay. What -- What was the -- What  
5 was the problem that at least she thought about Ronnie?

6 A To be sure, I'm not sure.

7 Q Okay. And what about before the campaign season in  
8 the 2021 election, did you have any disputes with Matt  
9 Wiggins?

10 A Before the '21? He had turned in 2019 for the same  
11 reason that Terri turned, that I didn't support their  
12 candidate.

13 Q Okay. So as the Mayor, tell me what -- what you do  
14 on a day-to-day basis.

15 A Well, this is a strong Mayor city and it's a -- I'm  
16 a volunteer, nonpaid. So for the most part, I'm here once a  
17 week during the afternoons, to communicate with our City  
18 Administrator and our Police Chief; and then prepare for  
19 Council meetings, and, occasionally, might sit in on a  
20 meeting.

21 Q Okay. So what types of things do you go over with  
22 the City Administrator at that meeting each week?

23 A Well -- So our City government, again, is a strong  
24 Mayor. I'm over the City Administrator and the Police Chief.  
25 That's it. City Administrator's over the City Hall side.

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1 Police Chief is over the Police side. So I don't necessarily  
2 communicate with them, our City staff or police. And my  
3 duties are to -- Council sets budget and policy. It's my  
4 responsibility to carry it out.

5 Q Okay. And when you say it's a -- "a strong  
6 Mayor" -- "Kemah's a strong Mayor city," what -- what do you  
7 mean by that?

8 A Well, I'm the CEO of the City.

9 Q Okay. And so by contrast, what would be a -- a  
10 weak Mayor city; and how is that different?

11 A Well, the other one would be City Manager form of  
12 government.

13 Q Okay. And so with respect to matters involving,  
14 you know, Building Code enforcement, what role do you play in  
15 that --

16 A None.

17 Q -- in enforcement actions?

18 A None.

19 Q Okay.

20 A I had staff for that.

21 Q Okay. So are there any types of code enforcement  
22 actions that require your approval?

23 A No.

24 Q Do -- Do you give directives to the City  
25 Administrator with respect to matters relating to code

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1 enforcement?

2 A No.

3 Q Okay. Let's see. I think it's Exhibit 1 -- or,  
4 sorry -- Exhibit 5. I'm handing you what's been marked as  
5 Exhibit 5.

6 MR. HELFAND: Let's just put on the record  
7 that Exhibit 5 is -- What was that number, again? Can I see  
8 that for one second, Mayor.

9 THE WITNESS: Sure.

10 MR. HELFAND: Thanks. Exhibit 5 is Kemah 834  
11 and 835. Thanks.

12 Q Okay. The -- I've just handed Exhibit 5, which is  
13 titled "Performance Improvement Plan"?

14 A Uh-huh.

15 Q Well, first, let me just ask you. What is a  
16 performance improvement plan?

17 A In this particular case, Council asked to review  
18 Walter Gant and come up with some things that he could  
19 improve on; and as Mayor, I was the one responsible to -- to  
20 sign it.

21 Q Okay. So who -- who drafted this document?

22 A I'm assuming, the City Secretary. I don't recall.

23 Q Okay. And this was -- If you look down, it's --  
24 it's to Walter Gant, City Administrator, from you, Carl  
25 Joiner, as Mayor, dated February 8th, 2022. And it starts

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1 off by saying, "Over -- Over the course of your assignment as  
2 City Administrator, Police Chief of the City of Kemah, which  
3 began October 1st, 2019, and October 1st, 2021, was modified  
4 to assume only the -- only the duties of City Administrator,  
5 it has become increasingly evident that you have not been  
6 performing your assigned work in accordance with what is  
7 expected of you."

8 And it says, "You have failed to address major  
9 deficiencies within the City's departments and/or disregard  
10 directives given by the Mayor and City Council."

11 And then when you go further down, there's a list  
12 of items starting with Item No. 1, that, "You have failed at  
13 times to follow Mayor's, Council's directive," and you get --  
14 it gives a list of three examples.

15 What was -- What was -- Just as -- as a bigger  
16 picture, what was the major problem with Walter Gant's  
17 performance?

18 MR. HELFAND: Objection, vague as to "major  
19 problem." It also assumes facts not in evidence that there  
20 was a major problem.

21 Q You can still answer.

22 A Again, this is a Council directive. You know, as  
23 Mayor, I don't vote. I'm responsible for carrying out their  
24 actions by signing this document.

25 Q Okay. Well, one -- one of the things on here, Item



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1 number -- I -- I guess, under 1-C, it says, "You -- You  
2 failed -- You have failed at times to follow Mayor, Council's  
3 directives, including" -- And one of which was, "including  
4 Brandon Shoaf in the short-term rental subcommittee, when  
5 asked not to include him." Did I read that correctly?

6 A Yes.

7 Q Who asked Walter Gant not -- to -- to not include  
8 Brandon Shoaf in the --

9 A I wasn't there --

10 Q -- short-term rental?

11 A -- and I wouldn't know.

12 Q Okay. But you don't -- you -- I mean, you -- you  
13 did -- You signed this and did send it to Walter Gant.  
14 Correct?

15 A Right.

16 Q Okay. So you don't dispute that somebody asked, on  
17 the City Council, for him not to be on the sub-- on the  
18 subcommittee.

19 MR. HELFAND: Objection, speculation.

20 A This was reviewed by the City Attorney, and I was  
21 instructed to sign it.

22 Q Okay. So if you -- Do you disagree with any of  
23 the -- Well -- And take your time to look it over, but do you  
24 disagree with any of the statements in this document?

25 MR. HELFAND: I'm sorry. That would call for

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1 him to speculate; and assumes facts not in evidence that he  
2 has the background to agree or disagree.

3 But if you have, you can certainly tell him  
4 anywhere where you agree or disagree.

5 A Again, this is a Council document, and I was  
6 instructed to sign it. I was in on the meeting when this was  
7 discussed, but again, I don't vote. It's a --

8 Q Okay.

9 A -- Council document, basically.

10 Q Okay. So what -- So a majority of the Council  
11 members have to vote to approve this. Is that correct?

12 A Yes.

13 Q Okay. So when was that vote held?

14 A I don't recall.

15 Q Would it have been at a City Council meeting?

16 A It would have had to be, yes.

17 Q Okay.

18 A Uh-huh.

19 Q And if you go to the second page, under A, it says,  
20 "Under your supervision, the following known deficiencies  
21 existed in the building department and were not addressed in  
22 a timely manner, including but not limited to absence of  
23 procedures for information, minimum requirements needed for  
24 permits, absence of procedures for Council consideration of  
25 variances or plat approvals, allowing items on the agenda

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1 without properly evaluating documents in a timely manner,"  
2 and that one goes on a little bit more.

3 No. 3, "Lack of any explanation of how to -- how  
4 proposed International Code changes vary from prior year's  
5 codes and why it's necessary to change now. This shows lack  
6 of quality control of the agenda."

7 "Lack of responses from billing department and  
8 other staff members to emails from Council -- Council or  
9 told, 'Yes, we'll follow up on it,' and then no response for  
10 long periods of time."

11 "Lack of communication with Council regarding how  
12 Brandon Shoaf became the Fire Marshal; and further, the  
13 hiring of Brandon as the building official, when he lacked  
14 credentials for the position; and then, even after a year  
15 passed, Brandon still lacks the credentials to perform as the  
16 building official." Did I read all that correctly?

17 A Yes.

18 Q Do you -- Do you agree with those statements?

19 A You'll notice, Council is listed in here, not  
20 Mayor.

21 MR. HELFAND: And just for the record, he's  
22 saying, "Council," C-I-L, not counsel, S-E-L, since the City  
23 Attorney was also involved.

24 THE WITNESS: Right.

25 MR. KILPATRICK: Yeah.

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1 THE WITNESS: Both.

2 MR. HELFAND: Right.

3 THE WITNESS: Yes, sir.

4 MR. KILPATRICK: Okay.

5 THE WITNESS: But, "the" -- "the" --

6 MR. HELFAND: So this is --

7 THE WITNESS: -- "Council," is what it says  
8 right --

9 MR. HELFAND: This is --

10 THE WITNESS: -- here.

11 MR. HELFAND: Right.

12 THE WITNESS: C-I-L.

13 MR. HELFAND: That's Council, C-I-L. Yes.

14 MR. KILPATRICK: Right.

15 MR. HELFAND: That's what I wanted to make  
16 clear.

17 MR. KILPATRICK: Right.

18 THE WITNESS: Yeah.

19 Q So -- So you are -- you are -- You've sat in --  
20 in -- in the meetings where all these issues were discussed.  
21 Correct?

22 A Correct.

23 Q Okay. And -- Well, as -- as the Mayor, was that  
24 your impression of Brandon Shoaf's and Walter Gant's  
25 performance?

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1           A     Again, I -- I was not involved, really, in the  
2 conversation.   Okay?

3           Q     Well -- Okay.   But -- Well -- But you, as the -- as  
4 the Mayor, implement what the -- just like when -- how you  
5 signed this document, you'd implement what the City Council  
6 votes on and approves.   Correct?

7           A     Right.

8           Q     Okay.

9           A     And, again, I don't vote.

10          Q     Right.   And -- And you oversee the City  
11 Administrator.   Correct?

12          A     Correct.

13          Q     And you oversee the building official.

14          A     No.

15          Q     Okay.   Who oversees the building official?

16          A     City Administrator.

17          Q     Okay.   So with respect to permitting Building Code  
18 and certificates of oc-- of occupancy issues, what role do  
19 you play in the decision-making with respect to issuance or  
20 revocation --

21          A     None.

22          Q     -- of those things?   None?

23          A     None.   None.

24          Q     Okay.   So that's solely the City Administrator's  
25 duty or that that -- that's -- that falls under his

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1 authority?

2 A Yes.

3 Q Okay. And what if -- what if the -- What if  
4 there's a difference of -- in agreement between City Council  
5 and City Administrator?

6 A In reference to, what?

7 Q If -- For example, if a stop work order is issued  
8 on a -- on a project by the -- and -- and City Administrator  
9 tells the building official to -- to red-tag a building. If  
10 the City Council disagrees with that decision, how is that  
11 handled?

12 A Well, number one, it would have to come and be on  
13 the -- the agenda and someone would have to put it on the  
14 agenda.

15 Q Okay.

16 A Okay? So -- Trying to think what the policy  
17 says -- But I don't recall right now, since I've been Mayor,  
18 where Council is overridden.

19 Q Okay. So if the building official revokes the  
20 certificate of occupancy, for example, that would have to be  
21 approved by Council?

22 A No.

23 Q Okay.

24 MR. HELFAND: Let me object. That calls for a  
25 legal conclusion, by the way. But your answer's fine.

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1 Q Okay. Then, who -- who makes that decision?

2 A Of revoking?

3 Q Of revoking the cert-- certificate --

4 A It would come from --

5 Q -- of occupancy.

6 A -- the permitting department.

7 Q And who -- who is in charge of the permitting  
8 department?

9 A Walter Gant.

10 Q The City Administrator --

11 A Uh-huh.

12 Q -- Walter Gant?

13 Okay. So the building official would have to get a  
14 directive from Walter Gant to revoke a certificate of  
15 occupancy. Is that --

16 MR. HELFAND: Objection --

17 Q -- your testimony?

18 MR. HELFAND: -- calls -- Sorry. Calls for  
19 speculation and a legal conclusion.

20 A The inspector probably could do it without his  
21 approval.

22 Q The -- The building official?

23 A Uh-huh.

24 Q Okay. And what about -- Same question, but who  
25 authorizes the issuance of -- of a building permit?

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1 A More often than not, probably the inspector.

2 Q The -- Is that -- When you say "inspector," do you  
3 mean building official?

4 A Yeah.

5 Q Okay. Well, just from your perspective, where --  
6 are -- do you think Brandon Shoaf did a good job while he was  
7 the building official?

8 MR. HELFAND: Objection, calls for  
9 speculation.

10 A Yeah. That's not my role as Mayor.

11 Q Well, no. I'm just asking you from what you know  
12 about his performance, do you think he did a good job?

13 MR. HELFAND: Objection, asked and answered;  
14 and calls for speculation. The man's already answered the  
15 question. You can answer it again.

16 MR. KILPATRICK: No, no.

17 A Yeah, it's been answered. You want to read it  
18 back?

19 Q So you -- So you did -- I -- I thought you said,  
20 "That's not my role."

21 MR. HELFAND: Right.

22 Q Well, let me just --

23 MR. HELFAND: He just --

24 A That's my answer --

25 MR. HELFAND: He told you he doesn't have an



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1 opinion 'cause that's not his job.

2 Q Who made the decision to -- to fire Brandon Shoaf?

3 MR. HELFAND: Hang on one second. Don't do  
4 that. Okay? You know the --

5 MR. KILPATRICK: What?

6 MR. HELFAND: You know that Brandon Shoaf  
7 resigned. We've got a document that --

8 MR. KILPATRICK: Hey, don't coach your  
9 witness.

10 MR. HELFAND: No, no, I'm not coaching my  
11 witness. I'm coaching you. It's inappropriate for a lawyer  
12 to say something they know is false. You know it's false.

13 MR. KILPATRICK: I know it's true.

14 MR. HELFAND: You have the man's resignation.  
15 You heard from his supervisor that he resigned. Don't ask  
16 him a question you know isn't true.

17 MR. KILPATRICK: Don't coach your witness or I  
18 will call the Judge.

19 MR. HELFAND: Call the Judge right now. We'll  
20 read this whole thing back to him. We'll read Mr. Gant's  
21 deposition, and we'll send him a copy of the resignation  
22 letter. Be careful --

23 MR. KILPATRICK: I've just got enough.

24 MR. HELFAND: -- what you wish for. Go ahead.  
25 Call the Judge.

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1 MR. KILPATRICK: I -- I know you're concerned  
2 about the fact that --

3 MR. HELFAND: Call the Judge.

4 MR. KILPATRICK: -- he got fired but just --

5 MR. HELFAND: Call the Judge.

6 MR. KILPATRICK: Just cut it out.

7 MR. HELFAND: Call the Judge. I'm waiting.

8 MR. KILPATRICK: I -- I -- I'm asking you to  
9 cooperate and follow the Rules. That's all I'm asking.

10 MR. HELFAND: Don't ask a question that you  
11 know is false. Mr. Shoaf was not fired, and you have no  
12 evidence that Mr. Shoaf was fired. Don't ask --

13 MR. KILPATRICK: Actually --

14 MR. HELFAND: -- a question --

15 MR. KILPATRICK: That's incorrect.

16 MR. HELFAND: Show it to me. Show it to me.

17 MR. KILPATRICK: It doesn't have to be a  
18 document.

19 MR. HELFAND: Show it to me.

20 MR. KILPATRICK: I have very good reason to  
21 believe that. And --

22 MR. HELFAND: Okay.

23 MR. KILPATRICK: -- it's very inappropriate  
24 for you to comment on that during the middle of a deposition  
25 and you know that.

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1 MR. HELFAND: You have another question?

2 MR. KILPATRICK: Of course, I do.

3 MR. HELFAND: Then ask your question.

4 MR. KILPATRICK: Then stop talking. Thank  
5 you.

6 MR. HELFAND: Ask your question.

7 MR. KILPATRICK: And follow the Rules, please.

8 MR. HELFAND: Ask your question.

9 MR. KILPATRICK: I will. I'll -- I'll ask it  
10 when I'm ready.

11 MR. HELFAND: You haven't ask-- No, you never  
12 ask when you're ready. You're going to ask it now or we're  
13 done.

14 MR. KILPATRICK: I --

15 MR. HELFAND: Go.

16 MR. KILPATRICK: I will conduct this  
17 deposition --

18 MR. HELFAND: Stop talking to me --

19 MR. KILPATRICK: -- the way I want to --

20 MR. HELFAND: -- and ask a question.

21 MR. KILPATRICK: -- 'cause I'm following the  
22 Rules and you are not.

23 MR. HELFAND: Stop talking to me and ask a  
24 question.

25 Every time you've told me I'm not following

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1 the Rules --

2 MR. KILPATRICK: I'm not even talking to you  
3 right now.

4 MR. HELFAND: -- the Judge told me and told  
5 you, I was following the Rules, so I'm going to go with --

6 MR. KILPATRICK: Let me hear one --

7 MR. HELFAND: -- the Judge's ruling.

8 MR. KILPATRICK: -- one -- one example.

9 MR. HELFAND: I'm going to go with the Judge's  
10 ruling, Mr. Kilpatrick.

11 MR. KILPATRICK: I -- I don't think he would  
12 agree with this one, can assure --

13 MR. HELFAND: Stop talking with me --

14 MR. KILPATRICK: -- can assure you that.

15 MR. HELFAND: -- and ask a question or we are  
16 done.

17 Q Back to my question. So why was Brandon Shoaf's  
18 employment terminated?

19 MR. HELFAND: Mr. Shoaf's employment was  
20 not --

21 MR. KILPATRICK: I'm not asking you.

22 MR. HELFAND: -- terminated.

23 MR. KILPATRICK: I'm asking him.

24 A It -- I agree, it was --

25 MR. HELFAND: I know, but I want you to

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1 know --

2 MR. KILPATRICK: Will you stop answering his  
3 questions?

4 MR. HELFAND: Stop talking. I'm going to talk  
5 to my witness. Mr. Shoaf's employment --

6 THE WITNESS: Resigned.

7 MR. HELFAND: -- was not terminated.

8 MR. KILPATRICK: Okay. Let's get the Judge on  
9 the phone. This is ridiculous.

10 MR. HELFAND: Okay. Go right ahead.

11 MR. KILPATRICK: I'm not going to let you do  
12 this.

13 MR. HELFAND: Sure. You don't have to let me  
14 do anything. I don't need your permission to do anything.  
15 I'm doing what the Rules permit.

16 MR. KILPATRICK: Answering questions for your  
17 witness? Yeah, that -- that --

18 MR. HELFAND: I haven't answered a question,  
19 yet.

20 MR. KILPATRICK: Yeah.

21 MR. HELFAND: Go ahead. Get the Judge on the  
22 phone. You want his phone number? I'll get it for you.

23 MR. KILPATRICK: Just -- Just cooperate.

24 MR. HELFAND: Hold on. Hold on. Hold on.

25 That's the second time -- No. We're stopping. We're getting

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1 the Judge on the phone.

2 MR. KILPATRICK: Okay.

3 MR. HELFAND: Hang on. I'll get it for you --  
4 Every time you don't know what you're doing, you want to  
5 threaten me with getting the Judge on the phone. Well, get  
6 him on the phone.

7 MR. KILPATRICK: Look, I mean, you're  
8 notorious for this, as Judge Hoyt called you, you know, an  
9 obstructionist and, you know, perjuring yourself.  
10 You're -- And I've talked to other lawyers, you're -- you're  
11 notorious --

12 MR. HELFAND: Mr. Kilpatrick --

13 MR. KILPATRICK: -- for this, and I'm not --  
14 I'm not going to let you do it at my deposition.

15 MR. HELFAND: Mr. Kilpatrick, your ad hominem  
16 means nothing to me. You can't be insulted by someone you  
17 don't respect.

18 MR. KILPATRICK: It's undeniable.

19 MR. HELFAND: I can't be -- You can't insult  
20 me because I don't respect your opinion. You have --

21 MR. KILPATRICK: It wasn't my opinion.

22 MR. HELFAND: -- no basis.

23 MR. KILPATRICK: It was Judge Hoyt and -- and  
24 other lawyers in your case, so...

25 MR. HELFAND: You -- Obviously, you don't know

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1 how to read a Fifth Circuit opinion. But you keep bringing  
2 that up like it means something.

3 You should talk to Judge Hoyt about that  
4 before you tell me what Judge Hoyt thinks 'cause I know what  
5 Judge Hoyt things about that.

6 MR. KILPATRICK: I would think that you'd stop  
7 acting like that after a Judge has sanctioned --

8 MR. HELFAND: You should talk to Judge Hoyt  
9 before you tell people you know what Judge Hoyt thinks  
10 because --

11 MR. KILPATRICK: I read his Order.

12 MR. HELFAND: Did you read the Fifth Circuit  
13 opinion?

14 MR. KILPATRICK: That -- The technicality. It  
15 doesn't matter. Doesn't mean it didn't happen.

16 MR. HELFAND: Did you read the Fifth Circuit  
17 opinion?

18 MR. KILPATRICK: Of course, I did. I read  
19 all of it.

20 MR. HELFAND: And what -- Do you know what  
21 "vacated" means?

22 MR. KILPATRICK: Doesn't matter.

23 MR. HELFAND: Do you know what "vacated"  
24 means?

25 MR. KILPATRICK: Doesn't mean it didn't

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1       happen.

2                       MR. HELFAND:   Have you talked to Judge Hoyt  
3       about his opinion?

4                       MR. KILPATRICK:   Did that really happen?

5                       MR. HELFAND:   Have you talked to -- No.  
6       That's why it --

7                       MR. KILPATRICK:   -- really happened.

8                       MR. HELFAND:   -- it was vacated.   Have you  
9       talked to Judge Hoyt about it?

10                      MR. KILPATRICK:   No.   I read his Order --

11                      MR. HELFAND:   You're on the record saying --

12                      MR. KILPATRICK:   -- and his findings of fact.

13                      MR. HELFAND:   -- saying, "This is what  
14       Judge Hoyt thinks."

15                      MR. KILPATRICK:   That's what his findings of  
16       facts and --

17                      MR. HELFAND:   I know and respect Judge --

18                      MR. KILPATRICK:   -- conclusions of law say.

19                      MR. HELFAND:   No, it doesn't.   Listen.   Stop  
20       talking for a second.   I know what Judge Hoyt thinks 'cause  
21       he and I have talked about this.   You haven't.

22                      If you want me to go show Judge Hoyt that  
23       you're out in the community telling people what he thinks,  
24       you got a record of saying that, I'll be happy to do that.  
25       Otherwise, you might want to ask Judge Hoyt what he thinks



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1 about --

2 MR. KILPATRICK: The only reason --

3 MR. HELFAND: -- before --

4 MR. KILPATRICK: The only reason that came up  
5 in the first deposition, you asked what -- what basis I have  
6 to say that, and I said I've read Judge Hoyt's Order --

7 MR. HELFAND: You have -- You --

8 MR. KILPATRICK: -- from the "Tollett" -- from  
9 the "Tollett versus City of Kemah" case.

10 MR. HELFAND: Mr. Kilpatrick, you --  
11 There's -- There's nothing about this proceeding that  
12 involves you making personal attacks on opposing counsel.

13 MR. KILPATRICK: You asked and I answered.  
14 Okay?

15 MR. HELFAND: No. I asked you to stop.

16 MR. KILPATRICK: I will stop.

17 MR. HELFAND: I did not --

18 MR. KILPATRICK: I'm asking you to stop.

19 MR. HELFAND: You keep -- No. You keep making  
20 personal attacks. I get it. It's borne of an insecurity. I  
21 understand it. I can see you shaking while we're talking.

22 MR. KILPATRICK: No. Your --

23 MR. HELFAND: So it's okay.

24 MR. KILPATRICK: Your hands are shaking right  
25 now --

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1 MR. HELFAND: Yeah, I -- Well, I'm old.

2 MR. KILPATRICK: -- and you keep picking up  
3 other exhibits that I don't have before the witness, trying  
4 to get -- answer questions for him. It's the most  
5 inappropriate thing I've seen.

6 MR. HELFAND: All right. Stop talking to me.  
7 Let me get you Judge Ellison's phone number and you can call  
8 Judge Ellison, and we will read him this entire back-and-  
9 forth about Mr. Shoaf being fired.

10 His chambers number is (409) 766-3729. You,  
11 probably, should call Mr. Castro at (409) 766-3555.

12 MR. KILPATRICK: (409) 766?

13 MR. HELFAND: 3555. But you haven't fared  
14 well so far in calling the Judge but...

15 MR. KILPATRICK: Well, he was out of town the  
16 first time, that's true.

17 MR. HELFAND: I'm sure he'll remember you from  
18 last time.

19 THE WITNESS: Take a little break, so I can  
20 get a bottle of water.

21 MR. HELFAND: Sure. Absolutely.

22 (Whereupon, briefly off the record.)

23 (Whereupon, Mr. Kilpatrick is on the phone  
24 with Court staff.)

25 (Whereupon, Mr. Kilpatrick requests reporter

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1 to locate answer.)

2 MR. HELFAND: Do you have some questions for  
3 him while you're waiting for the Judge?

4 MR. KILPATRICK: Well, she just found the  
5 spot. Hang on. We'll give it a second, I guess.

6 (Whereupon, briefly off the record.)

7 MR. HELFAND: I need the court reporter to put  
8 this on the record, please.

9 This is the third time --

10 MR. KILPATRICK: Let me say what I said. I  
11 just need your cooperation, and I need you to follow the  
12 Rules and I -- all I ask is that you don't answer the  
13 question for your witness and to state facts that you want  
14 your -- the witness to say because that's improper and  
15 doesn't follow the Rules.

16 MR. HELFAND: I have not yet done that, so we  
17 don't have to worry about that.

18 MR. KILPATRICK: Just --

19 MR. HELFAND: What I -- Mr. Kilpatrick, it's  
20 my turn to talk. Stop talking.

21 I've told you, if you wish to suspend the  
22 deposition under Rule 30D to present a motion to the Court,  
23 you may do so. If you wish to continue asking the Mayor  
24 questions, you may do so, but we are not going to sit here  
25 right now, so either ask more questions or suspend the

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1 deposition as the Rules permit.

2 MR. KILPATRICK: I would prefer that we work  
3 this out together without having to waste the Court's time  
4 because it's very simple. All I'm asking is, don't answer  
5 the question for your witness, don't state facts like you did  
6 here. I asked, "Who made the decision to fire Brandon  
7 Shoaf?"

8 And you -- And you interrupted your witness  
9 from answering and said, "He was -- He was -- He didn't -- He  
10 wasn't fired. He -- He resigned." That is inappropriate.

11 MR. HELFAND: That's not --

12 MR. KILPATRICK: That's not a legal objection.

13 MR. HELFAND: That's not what happened. The  
14 record is clear on what happened.

15 Do you have more questions for the witness or  
16 do you wish to suspend the deposition?

17 MR. KILPATRICK: I, of course, have more  
18 questions. All I ask is that you not answer questions for  
19 your witness, don't coach your witness and follow the Rules.  
20 It's very simple.

21 MR. HELFAND: I'm going to tell you for a  
22 fourth time. I haven't coached the witness. I haven't  
23 answered a question for the witness. And the fact that you  
24 think I have doesn't change the fact that it hasn't happened.

25 But we're not going to agree on that,

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1 Mr. Kilpatrick, no matter how many times you say it, so stop.

2 If you have a question for the witness, now's  
3 the time to ask; otherwise, we're going to consider the  
4 deposition suspended. Go ahead.

5 Q Okay.

6 MR. HELFAND: You know the Talking Heads?

7 MR. KILPATRICK: Yeah, I like the Talking  
8 Heads.

9 MR. HELFAND: "Singing it don't make it so,"  
10 is one of their lines.

11 MR. KILPATRICK: Oh, you used that one at the  
12 last deposition.

13 MR. HELFAND: It -- It's -- It's apt in your  
14 case.

15 MR. KILPATRICK: The record speaks for itself.

16 Q Okay. Mr. Joiner, are you ready to proceed?

17 A Yes.

18 Q Okay.

19 MR. HELFAND: He is Mayor Joiner.

20 MR. KILPATRICK: Okay. So Mayor Joiner.

21 Q Okay. So back to Brandon Shoaf. When was his  
22 employment with the City terminated as a building official?

23 A I don't recall.

24 Q Okay. But was it approximately in January, 2022?

25 MR. HELFAND: Objection, witness speculation.

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1 A I -- I don't -- I don't recall really.

2 Q Okay. And -- Well, looking at that letter that's  
3 sitting in front of you, Exhibit 5 --

4 A This one?

5 Q Yes. It's dated February 8th, 2022. At this point  
6 in time, had -- Well -- And -- And actually look at also the  
7 other exhibit, 6, right here.

8 MR. KILPATRICK: You can take your copy back,  
9 Bill.

10 MR. HELFAND: Exhibit 6 is number --

11 MR. KILPATRICK: Is -- Is this one.

12 MR. HELFAND: -- 1032.

13 Q So I put in front of you Exhibit 6, and it purports  
14 to be a letter from Brandon Shoaf, building official, fire  
15 marshal, to City of -- City of Kemah, Walter Gant, City  
16 Administrator, dated January 25th, 2022.

17 A Okay.

18 Q And it states that, "Allow this to serve as my  
19 official notice of resignation as the building official and  
20 fire marshal for the City of Kemah." So was this the date --

21 A I -- I don't know.

22 Q -- he actually resigned?

23 A This is the first time I've seen that --

24 Q Okay.

25 A -- seen this.

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1 Q Okay. So today is the first date you've seen this  
2 document?

3 A Yes.

4 Q So... Now I'll ask you again in a dif-- about a  
5 different part of this. What -- What brought about  
6 Mr. Shoaf's resignation?

7 MR. HELFAND: Objection, speculation.

8 A I don't know.

9 Q If this -- If today's the first time you've seen  
10 this document, that's a letter of resignation, how did you  
11 even know that he resigned?

12 A I didn't for awhile, to tell you the truth. I'm  
13 not -- I'm not over him.

14 Q Sir?

15 A I'm not over him. Walter Gant is.

16 Q Oh, okay.

17 A And just so you know, there's an ordinance that I  
18 don't have firing powers. Okay?

19 Q Okay. So -- So your role as the Mayor, you -- you  
20 don't have the power to -- to fire the building official?

21 A No.

22 Q Okay. So --

23 A I don't even have the power to fire City  
24 Administrator.

25 Q Okay.

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1 A Only Council can.

2 Q Okay. Thank you, for pointing that out.

3 So was Mr. Shoaf's resignation brought before  
4 Council in any meetings that you attended?

5 A Not specifically.

6 Q Okay.

7 A It's not required.

8 Q Okay. Well, was the termination of his employment  
9 discussed at any Council meetings?

10 A I don't think so.

11 Q Were there any Council meetings where -- that you  
12 attended, where Council members expressed their, I guess,  
13 complaints about his performance?

14 A That would not be done in a open Council meeting.

15 Q Okay. Do you recall in February -- February 16th,  
16 2022, there's a City Council meeting where the -- Veronica  
17 Crow and her husband came and addressed Council about issues  
18 related to their property on Bay Street?

19 A Yes.

20 Q Okay.

21 MR. KILPATRICK: Oh, wait.

22 (Whereupon, Mr. Kilpatrick is on the phone  
23 with Court staff.)

24 Q Okay. So the -- Again, back to the February 16,  
25 2022, City Council meeting, the Crows expressed their



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1 concerns about what information they were getting from  
2 Mr. Shoaf in regard to getting permits for their project  
3 that -- on the Bay Street property?

4 MR. HELFAND: Excuse me. That assumes facts  
5 not in evidence.

6 Q Do you remember that?

7 MR. HELFAND: Do you remember whether that was  
8 what happened?

9 THE WITNESS: No.

10 A I remember that they were at the meeting, yes.

11 Q Okay. Well, tell me what you remember about what  
12 they had to say at that City Council meeting.

13 A It was somewhat of a contentious Council meeting,  
14 in that the neighbors were -- were very upset at them, that  
15 it appeared they were doing things on their site without  
16 permits, et cetera, and so they brought it to City Council.

17 Q Okay. And do you recall Doug Meisinger stating  
18 what he learned about the situation during the City Council  
19 meeting?

20 A Somewhat, yeah.

21 Q Okay. And -- Well -- And -- And you actually met  
22 with the Crows before that City Council meeting to discuss  
23 their project. Correct?

24 A Yes.

25 Q And isn't it true you didn't want them putting

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1 short-term rentals on that property? Is that a fair  
2 statement?

3 A No.

4 Q Okay. What -- What -- What did you discuss with  
5 the Crows with respect to the short-term rental part of that  
6 project?

7 A Number one, I don't recall that it was short-term  
8 rental. What it was, was a barndominium, and the neighbors  
9 were upset about that.

10 Q Okay. Just -- At this City Council meeting, do you  
11 recall stating that --

12 MR. KILPATRICK: Oh, that's your phone.

13 Q (CONTINUING) -- do you recall stating something  
14 along the lines of you were glad that they took out the  
15 short-term rental component of their project?

16 MR. HELFAND: Objection, assumes facts not in  
17 evidence.

18 A I don't recall that.

19 Q Okay. And do you also recall Doug Meisinger  
20 making -- making statements about how the City had targeted  
21 certain businesses in the City that they've shut down even  
22 though they had permits?

23 A No.

24 Q You don't remember that?

25 MR. HELFAND: Excuse me. That also assumes

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1 facts not in evidence.

2 Q Do you --

3 A No.

4 Q Okay. So there was also a gentleman who spoke at  
5 the hearing about his project for the food -- food truck  
6 park. Do you recall that?

7 A At that meeting?

8 Q Yes.

9 A No.

10 Q Or -- Or -- Was there an agenda item on that for  
11 the approval of a food truck park?

12 A I don't recall.

13 Q You don't? Are you familiar with the -- the food  
14 truck park at -- for the property called Bu-- Bubble  
15 Jungle --

16 A Yes.

17 Q -- next door to -- And it -- That's next door to  
18 Palapas.

19 A Yes.

20 Q Okay. And did the City approve a food truck park  
21 to be located at -- at that property adjacent to Palapas'  
22 property?

23 A Yes.

24 Q Okay. And -- So from the time that you have been  
25 Mayor, approximately, how many food trucks in the City of

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1 Kemah had City permits to operate food trucks within the  
2 City?

3 MR. HELFAND: Objection, calls for  
4 speculation.

5 A I -- I don't recall.

6 Q Okay. Do you recall Brandon Shoaf speaking at a  
7 City Council meeting in August, 2021, stating that there was  
8 only one food truck in the City that had a City permit?

9 MR. HELFAND: Hang on. That's a multifarious  
10 question. There's two questions there. Does he consider --  
11 remember him speaking; and do you -- does he know what he  
12 said? Which one do you want him to answer?

13 MR. KILPATRICK: Either one.

14 MR. HELFAND: Well, no. He -- We have to know  
15 which one he's answering 'cause if he says yes to one and no  
16 to the other. Look, just -- Do you want to know if he  
17 recalls Mr. Shoaf speaking at all at that Council meeting or  
18 do you want him to -- to tell you whether he remembers  
19 Mr. Shoaf ever saying what you claim you think Mr. Shoaf  
20 said?

21 Q Did you understand my question?

22 A Could you repeat that, please.

23 MR. HELFAND: It doesn't matter whether he  
24 understands it. He's not answering it, so -- You either --  
25 It's a multifarious question. It's not a fair question

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1 'cause it's a multifarious question. Just break it up into  
2 two questions.

3 Q Okay. Do you recall Brandon Shoaf speaking at any  
4 City Council meeting about the number of food truck permits  
5 that had been issued by the City?

6 A No.

7 Q Never?

8 A Correct.

9 MR. HELFAND: He does that a lot, where he'll  
10 say something and you tell him the answer and then he says,  
11 "That's your answer?", so you have to say it twice sometimes.  
12 It's just a -- That's his thing.

13 MR. KILPATRICK: Whose phone is that? Oh,  
14 that's yours.

15 Q Okay. Let's see. Do you recall the food truck at  
16 the Palapas property being towed on October 11th, 2021?

17 A No, I was not a part of it.

18 Q Okay. But -- But you -- you know now, sitting here  
19 today, that that -- it was towed around that time?

20 A I don't even know that it was towed. Okay. I  
21 wasn't a part of it.

22 Q Okay. Who was part of that?

23 MR. HELFAND: Objection, calls for  
24 speculation.

25 A You need to talk to Walter Gant about that.

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1 Q Well, I did, and -- and he didn't know.

2 MR. HELFAND: No, no, don't -- No, don't do  
3 that. Don't tell him what happened in another deposition.  
4 Ask him a question.

5 MR. KILPATRICK: I'm asking. You -- You  
6 interrupted --

7 MR. HELFAND: 'Cause that's not what --

8 MR. KILPATRICK: -- me. I wasn't done.

9 MR. HELFAND: That's not what Walter said, so  
10 don't --

11 MR. KILPATRICK: I wasn't done talking.

12 MR. HELFAND: You tell me when you're done  
13 talking. I'll tell you the same thing. You ask him  
14 questions. You don't tell him what you think another witness  
15 said in a deposition 'cause you're mischaracterizing  
16 Mr. Gant's testimony.

17 MR. KILPATRICK: There's nothing wrong with me  
18 starting off my question like that.

19 MR. HELFAND: Stop interrupting. You're not  
20 listening.

21 MR. KILPATRICK: You're interrupting me and my  
22 deposition.

23 MR. HELFAND: No, no, it's our deposition.  
24 Who made it your deposition.

25 MR. KILPATRICK: This is my one chance to

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1 depose --

2 MR. HELFAND: Yes.

3 MR. KILPATRICK: -- Mayor Joiner.

4 MR. HELFAND: So ask him questions. Don't  
5 tell him things. What you told him is incorrect.

6 MR. KILPATRICK: You're --

7 MR. HELFAND: Now ask him a question.

8 MR. KILPATRICK: Stop coaching, again. Mark  
9 that.

10 MR. HELFAND: Yeah, mark that. That's  
11 coaching, according to Mr. Kilpatrick. Mark that as  
12 coaching. Put a big C next to it.

13 Do you have a question for the man?

14 MR. KILPATRICK: Yes, of course, I do.

15 MR. HELFAND: Ask a question.

16 MR. KILPATRICK: Sorry for the interruption.

17 Q So -- So the only person who would know who  
18 authorized, that would be Walter Gant?

19 MR. HELFAND: Objection, calls for speculation  
20 as to who -- who the only person, the only people who would  
21 know are.

22 Q Well, who -- From your understanding, who -- who  
23 would know, who would I need to ask about the food truck  
24 being towed on October 11th, 2020?

25 MR. HELFAND: Objection, calls for

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1 speculation.

2 Q You can answer.

3 MR. HELFAND: Do you know?

4 THE WITNESS: No.

5 MR. HELFAND: Well, tell him that.

6 Q Well, you said Walter Gant a second ago.

7 MR. HELFAND: Well --

8 Q Anyone else?

9 MR. HELFAND: -- he did say Walter Gant.

10 Q That's it?

11 A Right.

12 Q Okay. And so if Walter Gant didn't know, then  
13 what?

14 A I have no idea.

15 Q Okay. Okay. I'm going to hand you what's been  
16 marked as Exhibit 12.

17 (Exhibit 12 marked.)

18 MR. HELFAND: Okay. Once again, we run into a  
19 problem that is a document that's not been produced in this  
20 case. I'm not going to do anything about it 'cause it  
21 reports to be City Council meeting minutes of  
22 September 1st -- Or, sorry -- the agenda for September 1st,  
23 2021.

24 But I'm going to tell you, Mr. Kilpatrick, the  
25 Rules do not allow you to use documents in a deposition that



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1 have not been produced.

2 MR. KILPATRICK: Well, do you have a problem  
3 with me using this to ask him questions?

4 MR. HELFAND: I -- I feel like you're not  
5 listening to me. I said I'm not going to make an issue of it  
6 as to this document because it looks like it's a public  
7 record. But if you have other documents that have not been  
8 produced, you're not going to be able to use them.

9 MR. KILPATRICK: Okay.

10 MR. HELFAND: You can't question a witness  
11 about a document you haven't disclosed or otherwise  
12 exchanged.

13 Q Okay. Anyway, let's go to the -- Page 3.

14 A Okay.

15 Q Or -- Or actually make that page -- Page 4, at the  
16 top, where we see No. 3. It's -- So in this Exhibit 12, it  
17 says, on Page 4 of 4 of the agenda, Item 3, at the top, says,  
18 "Possible legal action on lack of enforcement of  
19 Ordinance 1178, 1188, and 1189, and the City adopted 2009  
20 International Building Code, which requires changing from  
21 single family to hotel-motel building codes for STRs." And  
22 then has a "Joiner" in parentheses to the right. Do you see  
23 that?

24 A Yes.

25 Q Was this an item that you put on the agenda for the

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1 executive session?

2 A Yes, obviously.

3 Q Okay. So do you believe that --

4 MR. HELFAND: Go ahead and ask your question.  
5 I want him to wait.

6 Q Okay. Do you believe that STRs, that's short-term  
7 rentals, require changing from the single family to hotel-  
8 motel building codes?

9 MR. HELFAND: Let me object that that invades  
10 the legislative privilege, and he will not answer questions  
11 involving the legislative privilege.

12 Q Okay. And -- Yeah. Don't -- Don't answer that to  
13 the extent it involves anything that's, you know, attorney-  
14 client privilege or legislative privilege. But I'm just  
15 asking you, as the Mayor of the City, irrespective of what  
16 was discussed at the -- during executive session, do you  
17 believe that short-term rentals are required to change from  
18 single family to hotel-motel Building Code?

19 MR. HELFAND: Okay. I'm -- I'm afraid you  
20 don't understand the legislative privilege; although, I  
21 warned you of this when you asked for the Mayor's deposition.  
22 You are not permitted to ask the Mayor his thought processes  
23 regarding why he put something on the agenda, conversations  
24 he has with Council members. You're not entitled to his  
25 thought processes regarding the -- the business of the City.

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1 Q Okay.

2 MR. HELFAND: That's legislative privilege.

3 Q And I -- I don't want to ask you about why you put  
4 it on the agenda, why -- or what you discussed in executive  
5 session --

6 MR. HELFAND: But that's not the limitation.  
7 You can't even ask him what -- what he thinks about it, which  
8 is what you just asked.

9 Q I'm just ask-- I'm just asking what you,  
10 personally, do you believe that short-term rentals are  
11 required to change from single family to hotel-motel building  
12 codes?

13 MR. HELFAND: You're -- He -- There's no him,  
14 personally.

15 No offense.

16 You're -- He's the Mayor. You're asking him  
17 questions as the Mayor of somebody he put on the agenda.  
18 It's within the legislative privilege, and he's not going to  
19 answer it. Move on. And if you think the law requires it,  
20 tell the Judge or show it to me, and I'll look at it. But  
21 that's directly within the legislative privilege.

22 I warned you this, when you told me you wanted  
23 the Mayor's deposition, and you told me, "I'm not going to  
24 get into the Mayor's thought processes regarding how he  
25 conducts himself as the Mayor."

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1 MR. KILPATRICK: Well, no. Initially, you --  
2 you refused to produce him altogether --

3 MR. HELFAND: No, that's not --

4 MR. KILPATRICK: -- until, once again, I  
5 proved that -- that -- that doesn't apply.

6 MR. HELFAND: Brian. Brian. If you have  
7 another question for the man, ask him. He's not asking (SIC)  
8 questions about his thought processes as a member of the  
9 legislative body.

10 Q And I'm not asking you that. That's not my  
11 question. I just want to know, do you believe that STRs,  
12 short-term rentals, have -- or have -- are required to change  
13 from single family to hotel and motel building codes?

14 MR. HELFAND: What -- what he believes as the  
15 Mayor is privileged. He's not answering the question.  
16 You've now asked it three times. I've told you it's  
17 privileged. He's not asking (SIC) it.

18 And then what you say is, "I don't want to  
19 know what you believe. Now, do you believe?"

20 You have another question 'cause this one's  
21 done?

22 Q Well, you recall stating in open sessions during  
23 City Council meetings that you believe that STR, short-term  
24 rentals, are required to comply with hotel-motel building  
25 codes. Correct?

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1 MR. HELFAND: That assumes facts not in  
2 evidence.

3 Have you said that?

4 THE WITNESS: I don't recall.

5 MR. HELFAND: Okay.

6 Q Never -- So sitting here today, you don't recall  
7 ever saying --

8 A I don't recall.

9 Q -- those words.

10 A I don't recall.

11 Q And you don't be-- So -- And you won't answer my  
12 question whether you believe -- I'm not talking about what  
13 you discussed with the City Council. Talking about outside  
14 of your role as the Mayor on City Council in your legislative  
15 capacity, your role as the Mayor and implementing what City  
16 Council has enacted, what your position is, if -- do -- does  
17 a short-term-rental property have to comply with hotel-motel  
18 building codes?

19 MR. HELFAND: Mayor, don't answer that  
20 question. It's privileged. But it's now been asked four  
21 times, and if you ask it again, we're going to leave.

22 MR. KILPATRICK: I'm asking a different way.

23 MR. HELFAND: I know, but it's the same  
24 question.

25 MR. KILPATRICK: And it's a baseless

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1 objection.

2 MR. HELFAND: It's the same question.

3 MR. HELFAND: Okay. Well, we'll take that one  
4 up with the Judge, too.

5 MR. HELFAND: Okay. Now, move on to a  
6 different one, though.

7 Q So since you testified earlier that you don't play  
8 a role in Building Code enforcement, why -- why were you  
9 meeting with the Crows at their property?

10 A Because the neighbors had asked me to meet with  
11 them.

12 Q Okay. So sometimes you get involved in certain  
13 permit code enforcement, things of that nature, those issues.

14 A Yes.

15 Q Okay. And --

16 A I miss -- met with Mr. Placek because some of his  
17 neighbors asked me to do it.

18 Q Okay. Which neighbors asked you to meet with  
19 Mr. Placek?

20 A One of the bars there.

21 Q Okay. Which -- Which bar?

22 A I think it was Voodoo.

23 Q The Voodoo Lounge?

24 A (NODS HEAD AFFIRMATIVELY.)

25 Q Who -- Who's the person at Voodoo Lounge that asked

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1 you to do that?

2 A I think it was him. That was Harry -- Harry.

3 Q Okay. So you remember the meeting you had with  
4 Mr. Placek?

5 A Yes, we met one evening at a restaurant.

6 Q Okay. Where was the restaurant?

7 A In Clear Lake Shores.

8 Q Okay. And do you -- What did you discuss at that  
9 meeting?

10 A He had concerns and asked me to set up a meeting at  
11 City Hall, I think it was that following Monday, that he'd  
12 been in town and wanted to get everyone together, so I did  
13 set that up.

14 Q Okay. And tell me what happened at the meeting.

15 A It didn't happen.

16 Q Oh, there was no meeting?

17 A Yeah, Mr. Placek -- I don't remember exactly what  
18 happened, but he couldn't make the meeting, so it didn't  
19 happen.

20 Q Okay. And do you recall telling Mr. Placek that if  
21 he got rid of the short-term rentals, that you would get him  
22 a certificate of occupancy for the bar?

23 A No.

24 Q No?

25 MR. HELFAND: Objection, leading. Object that

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1 that assumes facts in evidence.

2 What don't you ask him if he said something,  
3 not that he said something, 'cause I'm going to have to  
4 object every time you say, "Do recall saying," something,  
5 unless you lay a predicate that he actually said it.

6 But the Mayor's already rejected that one, so  
7 move on to the next question.

8 Q Okay. So what exactly did you discuss with Matt  
9 Placek when you did -- when -- when you met with him at the  
10 restaurant?

11 A I've answered that.

12 Q What particular issues?

13 A I don't recall. It's been a long time ago.

14 Q Okay. Well, let me just throw out some things that  
15 may refresh your recollection. Did you discuss the  
16 short-term rental units on the third --

17 A I don't recall.

18 Q -- and fourth floors?

19 A I don't recall.

20 Q Did you discuss the food truck?

21 A I don't recall.

22 Q Did you discuss the first and second floors inside  
23 the building?

24 A I don't recall.

25 Q Do you -- Do you recall even generally what the --



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1 what the issue was at that time?

2 A Getting his permit. That's what I recall.

3 Q Okay. And what was your understanding of the  
4 problem with getting the permit?

5 A That's why I set the meeting up.

6 Q But --

7 A Because I'm not -- I'm not involved in that  
8 process. I was asked to set the meeting up and I did.

9 Q Okay. Was it -- Anyone -- Did anybody else attend  
10 that meeting?

11 A It didn't happen.

12 Q No. I meant the meeting at the restaurant.

13 A No.

14 Q Okay. How often do you meet with business owners  
15 that are ex-- experiencing issues getting permits?

16 A Not very often.

17 Q Okay. So since you've been Mayor, approximately,  
18 how many times have you done that?

19 A Less than five, probably.

20 Q Okay. Which -- Which other business owners have  
21 you had to meet with?

22 A Bubble Jungle; this one we talked about; the Crows.  
23 I think that's it.

24 Q Okay. Those three?

25 A (NODS HEAD AFFIRMATIVELY.)

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1 Q Okay. What about Doug Meisinger?

2 A What about him?

3 Q Did -- Did you meet with him about issues with  
4 permits or certificates of occupancy with his property --

5 A No.

6 Q -- or -- or his business?

7 A No.

8 Q No? What about Matt Wiggins?

9 A No. They don't speak to me.

10 Q Okay. Well, within -- within your experience as an  
11 architect, do -- do you have an understanding of the -- the  
12 Building Code -- the applicable Building Codes?

13 A Yes.

14 Q Okay. So in the City of Kemah, the 2009  
15 International Building Code that we've marked as  
16 Exhibit 11 --

17 A Uh-huh.

18 Q -- is this the Code that applies --

19 MR. HELFAND: Is the Code?

20 Q -- the Building Code that applies in the City of  
21 Kemah?

22 MR. HELFAND: Object that it calls for a legal  
23 conclusion; speculation.

24 Q Well -- And -- Let me rephrase that, actually. For  
25 anything that is built after 2009, would the 2009

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1 International Building Code be the applicable Code that an  
2 owner would have to comply with?

3 MR. HELFAND: Objection, calls for a legal  
4 conclusion; and speculation.

5 Q You can still answer.

6 A Yes.

7 Q Okay. What about if something was built in 2008 --

8 MR. HELFAND: Objection, calls for a legal --

9 Q -- which Code would apply?

10 MR. HELFAND: Pardon me. Calls for a legal  
11 conclusion; speculation.

12 THE REPORTER: What?

13 MR. KILPATRICK: Sorry. He keeps  
14 interrupting.

15 THE REPORTER: "What about if something was  
16 built in 2008, which" --

17 Q What about if something was built in 2008, which  
18 Code would apply?

19 MR. HELFAND: Objection, calls for a legal  
20 conclusion; and speculation.

21 Q You can answer.

22 MR. HELFAND: You can answer if you know.

23 A Well, where is it being built at?

24 Q Well, I guess the point I'm getting at is,  
25 generally speaking, the -- the 2009 Code is going to apply to

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1 anything that was built after 2-- on -- in 2009 and after.  
2 Right?

3 A Correct.

4 MR. HELFAND: Objection, legal conclusion;  
5 speculation.

6 Q So if something was built in the '80s or '90s, the  
7 2000 Code -- 2009 Code, generally speaking, would not apply  
8 to something that's -- that was built before that.

9 MR. HELFAND: Objection, legal --

10 Q Correct?

11 MR. HELFAND: -- conclusion; speculation.

12 Q Is that a fair statement?

13 A No.

14 Q Okay. Well, tell me what would apply in -- under  
15 those circumstances.

16 MR. HELFAND: Objection, legal conclusion;  
17 speculation.

18 Q You can answer.

19 A As an architect or as a Mayor?

20 Q Well, I'm -- I'm just saying, you know, with your  
21 experience as an architect, you know -- you -- you said you  
22 know these things, so which -- which Code would someone have  
23 to comply with...

24 A Depending on the amount of work --

25 Q Okay.

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1 A -- it would be this Code.

2 Q Right. So -- There -- And there are provisions  
3 that say, if you build more than fifty percent of the value,  
4 and things of that nature, that -- that it could -- that you  
5 have to bring it up to current Code. Correct?

6 MR. HELFAND: Excuse me. Mischaracterizes the  
7 document; calls for speculation and a legal conclusion.

8 Q That's fine. You can answer.

9 A No, I -- I'd have to research that. Okay?

10 Q Yeah, I understand there's specific situations but  
11 just broadly speaking, the --

12 A I can't broadly speak.

13 MR. HELFAND: Yeah. He can't broadly speak of  
14 what a statute says.

15 Q Okay. So in the 2009 Building Code that's sitting  
16 in front of you as Exhibit 11 --

17 A Uh-huh.

18 Q -- is there anywhere in there that authorizes a  
19 building official to issue a zero occupancy red tag?

20 MR. HELFAND: Objection, calls for speculation  
21 and a legal conclusion.

22 Do you know?

23 THE WITNESS: No.

24 Q Okay. Are you aware of any red tags being placed  
25 on any buildings in the City of Kemah since you've been

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1 Mayor, that provide for or that state a zero occupancy for a  
2 building?

3 A No.

4 Q No? Did you know that Brandon Shoaf put a zero  
5 occupancy red tag on Palapas?

6 MR. HELFAND: Objection, assumes facts not in  
7 evidence.

8 A No.

9 Q Okay. In your ex-- With your experience as an --  
10 as an architect, how do you determine the -- the occupancy  
11 number for a building?

12 A "Occupancy number," what do you mean?

13 Q Like the -- the actual occupancy, the number of  
14 people that can be inside of a building.

15 A Well, first, you start with what the occupancy is,  
16 then you go to that section.

17 Q The occupancy type?

18 A Uh-huh.

19 Q Okay. So you -- Occupancy type. And then from  
20 there, how do you arrive at a number for any given --

21 A Follow that section in the Code.

22 Q Okay. So would it be the occupancy type, times the  
23 square foot -- or -- and then look at the square footage --

24 A Depends what it -- Depends what this Code says.

25 Q Okay. But it's all in -- in -- It's all in the

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1 Code?

2 A Uh-huh.

3 Q Okay. So when a building official goes out and  
4 makes determinations on the number of occupants that can be  
5 in a property pursuant to a certificate of occupancy, that  
6 would be determined based on the calculation in the Code.

7 MR. HELFAND: I'm sorry. Now you want him to  
8 testify what a building per-- official's supposed to do?  
9 That's speculation.

10 MR. KILPATRICK: Well, that's also what  
11 architects do.

12 MR. HELFAND: Let me just stop for just a  
13 moment here. You asked to take the deposition of the Mayor  
14 of the City of Kemah about issues relating to -- standing in  
15 this case.

16 You've now found out that he's an architect,  
17 which I'm impressed, too, but we're -- he's not an expert  
18 witness on building Codes or architecture. I'm letting him  
19 answer 'cause you -- it's just -- it -- it -- you're using up  
20 time that has nothing to do -- goes nowhere and does nothing,  
21 as they say on the U-- USS Enterprise.

22 But he can't testify -- It's speculating as to  
23 what a building official is supposed to do. He can testify  
24 what architects do.

25 MR. KILPATRICK: If he knows, he can answer.

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1 MR. HELFAND: Sure. That's why I said, it's  
2 speculation.

3 MR. KILPATRICK: Okay.

4 MR. HELFAND: But I will say this. I'm not  
5 going to sit here for several hours and have you ask  
6 questions about architects and -- and neither is he.  
7 That's -- He's --

8 MR. KILPATRICK: Oh, don't worry. I'm not.

9 MR. HELFAND: -- to do. Okay.

10 THE WITNESS: How about if we take a little  
11 break?

12 MR. HELFAND: Yeah, that'd be great.

13 MR. KILPATRICK: Okay.

14 THE VIDEOGRAPHER: Off the record at  
15 2:37 p.m., ending Card 1.

16 (Whereupon, briefly off the record.)

17 MR. HELFAND: Five-minute break,  
18 Mr. Kilpatrick. If you're leaving the room, we're leaving.

19 MR. KILPATRICK: Look, we -- we skipped lunch  
20 to get started at 1:00 'cause you had to take a phone call  
21 earlier, so I -- I expect you to --

22 MR. HELFAND: I took a phone call for four  
23 minutes. It's on my phone. Listen to me again --

24 MR. KILPATRICK: We're going to go eat lunch  
25 in the other room. I'm not going -- I'm not going to let you



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1 tell me what to do.

2 MR. HELFAND: Okay. We're -- Then, we're  
3 leaving. I want you to know the Mayor's leaving.

4 MR. KILPATRICK: You're not -- No, you're not.

5 MR. HELFAND: Yes, we are.

6 MR. KILPATRICK: No.

7 MR. HELFAND: The Mayor is leaving.

8 MR. KILPATRICK: We're going to -- We're going  
9 to take --

10 MR. HELFAND: We told you --

11 MR. KILPATRICK: -- ten minutes to eat lunch.

12 MR. HELFAND: -- the Mayor would start at  
13 1:00 o'clock --

14 MR. KILPATRICK: That's a five-minute  
15 difference. Same --

16 MR. HELFAND: -- and you would --

17 Mr. Kilpatrick, tell me when done.

18 MR. PLACEK: We're not eating lunch, then.

19 MR. HELFAND: Okay. We're leaving.

20 MR. KILPATRICK: No, you're not.

21 MR. HELFAND: We're leaving 'cause you're  
22 walking out while I'm talking to you and you don't do that.  
23 You don't drop something and then walk out of a room. This  
24 is not a discussion with a family member. You act like a  
25 professional. Listen to me.

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1                   You told me you would start at 1:00 o'clock  
2                   and keep going, and the Mayor said he would stay, so you  
3                   could finish. Now you're telling me you want to go eat  
4                   lunch. No.

5                   If you're not back here when the Mayor's back  
6                   here, we're leaving. Do you understand?

7                   MR. KILPATRICK: We were supposed to be done  
8                   by noon --

9                   MR. HELFAND: We were.

10                  MR. KILPATRICK: -- but because of you, we  
11                  were not, not only because you've delayed it and you had to  
12                  take a phone call, but, also, I let you -- you cut into all  
13                  my time by making speaking objections and doing other  
14                  inappropriate things that you've done in all the depositions  
15                  now.

16                  MR. HELFAND: My phone call took three  
17                  minutes. If you're not here when the Mayor's ready to go,  
18                  we're leaving. Do you understand that? That --

19                  MR. KILPATRICK: Are you --

20                  MR. HELFAND: -- simple.

21                  MR. KILPATRICK: Are you serious?

22                  MR. HELFAND: Yeah, I'm dead serious. We're  
23                  not wasting that gentleman's time.

24                  MR. KILPATRICK: You said you wanted --

25                  MR. HELFAND: You've already wasted asking

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1 questions --

2 MR. KILPATRICK: -- a five-minute break.

3 We're asking for another five more minutes.

4 MR. HELFAND: Listen. You asked me a  
5 question. I'm telling you the answer. You've already wasted  
6 his time asking questions about architects. You already  
7 wasted his time by pretending to -- make facts and ask him to  
8 answer to them.

9 If you're not here, and he's ready to go, he  
10 said five minutes, we're ready to go. Are you ready to go?  
11 If not, we're leaving.

12 MR. KILPATRICK: Well, five minutes hasn't  
13 started yet --

14 MR. HELFAND: That's all --

15 MR. KILPATRICK: -- 'cause I've been wasting  
16 my time talking to you.

17 MR. HELFAND: Mr. Kilpatrick, sit down and ask  
18 more questions or we're done.

19 MR. KILPATRICK: No.

20 MR. HELFAND: Okay? All right. Well, then,  
21 we're done. We'll put on the record that we're done. Our  
22 agreement --

23 MR. KILPATRICK: No, no.

24 MR. HELFAND: -- was the Mayor would -- would  
25 appear at 1:00 o'clock --

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1 MR. KILPATRICK: No.

2 MR. HELFAND: -- to do his deposition --

3 MR. KILPATRICK: Mr. Helfand --

4 MR. HELFAND: You don't have any more  
5 questions for him, it's fine.

6 MR. KILPATRICK: -- had to take a phone call  
7 in the last deposition, so -- it lasted longer than we had  
8 agreed --

9 MR. HELFAND: Mr. Kilpatrick.

10 MR. KILPATRICK: -- and now he's --

11 MR. HELFAND: I don't care --

12 MR. KILPATRICK: -- being argumentative.

13 MR. HELFAND: -- what your rationale is --

14 MR. KILPATRICK: He's still interrupting me.

15 MR. HELFAND: You have a choice.

16 MR. KILPATRICK: -- as we speak right now,  
17 he's interrupting me. He's being rude, unprofessional, and  
18 not been following the Rules all day. We're -- We're asking  
19 for a five-minute break to -- to eat the lunch --

20 MR. HELFAND: A five-minute break is fine.  
21 Five minutes. It is 2:42. You should have taken a five-  
22 minute break when the Mayor took a five-minute break. Be  
23 back here ready to ask questions at 2:50 or we won't be here.

24 (Break.)

25 MR. KILPATRICK: I, Brian Kilpatrick, am back

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1 now pursuant to our agreement to take a break for five  
2 minutes. It's now 2:49 and Bill is not in the room, and we  
3 are waiting on him, so -- I just want to make the record  
4 clear that we're waiting on -- on Bill Helfand, and my client  
5 and I have been ready to proceed.

6 (Whereupon, briefly off the record.)

7 THE VIDEOGRAPHER: On the record at 2:50 p.m.,  
8 beginning Card 2.

9 Q Okay. Mayor Joiner, I'm handing you what will be  
10 marked Exhibit 13.

11 (Exhibit 13 marked.)

12 MR. HELFAND: This is marked Kemah 2.

13 Q Okay. And so Exhibit 13 is a document with  
14 Resolution Number 2017-11 at the top. Do you recognize this  
15 document, Mayor Joiner?

16 A Yes.

17 Q Okay. And in the body of this document it says,  
18 that, "A variance is hereby granted for a special commercial  
19 area that is hereby created in or -- in a corridor along the  
20 south side of 6th Street, from Bradford Street to Kipp  
21 Street, wherein the owners of the lots abutting 6th Street  
22 will be allowed to install, use and utilize structures up to  
23 the street right-of-way." Did I read that correctly?

24 A Yes.

25 Q Okay. And at the bottom, it -- I guess this was

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1 enacted when you were Mayor?

2 A Yes.

3 Q Okay. And what was the purpose of enacting this  
4 resolution?

5 MR. HELFAND: Sorry. That's a legislative  
6 permit. The doc-- The ordinance speaks for itself -- The  
7 resolutions speaks for itself. You're not entitled to know  
8 the purpose, the thought process, the ideas, the goals behind  
9 adopting it. That's the legislative privilege.

10 MR. KILPATRICK: Okay. Fair enough. I'll --  
11 I'll agree with you there.

12 Q So this resolution creates a commercial zone on the  
13 side of 6th Street that Palapas is on. Correct?

14 A Yes.

15 Q Okay. And the other businesses along that same  
16 stretch of 6th Street have built decks out to the point  
17 pursuant to this document. Is that a fair statement?

18 MR. HELFAND: Sorry. That assumes facts not  
19 in evidence and it's also multi-- also multifarious.

20 Q Okay. Well, let me ask you this way. Are you  
21 familiar with the business Scallywag's?

22 A Yes.

23 Q Okay. And are you familiar with the deck that they  
24 built out towards the street that covers the parking spaces  
25 that used to be along the south side of 6th Street?

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1 A Yes.

2 Q Okay. So Scallywag's, the area -- the point to  
3 which Scallywag's built out that deck, is that the area  
4 that's covered by this document?

5 MR. HELFAND: Objection, calls for a legal  
6 conclusion.

7 A I can't say, specifically, that it does, but it's  
8 got to be close.

9 Q Okay. And then, there's a -- there's another  
10 business on the street called Shot Bar.

11 A Uh-huh.

12 Q Are you familiar with that business?

13 A (NODS HEAD AFFIRMATIVELY.)

14 Q And they built a deck out towards the street, as  
15 well?

16 A That is correct.

17 Q And the point at which the deck ends, is that the  
18 area that's within the commercial zone approved by this  
19 document?

20 MR. HELFAND: Objection, mischaracterizes the  
21 document; and also calls for speculation.

22 Q You can answer.

23 A It -- It's got to be close like Scallywag's.

24 Q Okay. And then are you familiar with the deck that  
25 was built at the Palapas property?

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1 A That one, I'm not as familiar with.

2 Q Okay. So if that deck is built out to the same  
3 point that the other -- that those two other properties are  
4 built, that would be within the area of the special  
5 commercial zone. Is that a fair statement?

6 MR. HELFAND: Objection, assumes facts not in  
7 evidence; and again, calls for speculation. Moreover, it  
8 mischaracterizes the resolution.

9 Q You can answer.

10 A To the best of my knowledge, yes.

11 Q Okay. So while -- Since you've been Mayor in the  
12 latest election, you know, after the 2021 election, have you  
13 ever asked Brandon Shoaf to do anything with respect to, you  
14 know, Code enforcement or issuing permits related to any  
15 business in Kemah?

16 A No.

17 Q Do you ever email with Brandon Shoaf about Code  
18 enforcement issues?

19 A I could have.

20 Q Okay. But you -- you never asked him to actually  
21 go inspect a property or go issue a permit or deny a permit,  
22 anything like that?

23 A There's several questions in that.

24 Q Okay. Well -- Well -- Yeah. Let's -- Let's go one  
25 by one. Have you ever asked Brandon Shoaf to perform any



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1 type of inspection on a property in the City of Kemah?

2 A I don't recall.

3 Q Okay. Have you ever asked him to request that any  
4 third party perform an ADA compliance inspection?

5 A Possibly.

6 Q Okay. What -- So -- Is there something you recall  
7 with respect to ADA compliance?

8 A Sir, I just know, as an architect, that all  
9 facilities need to comply. Okay?

10 Q Okay. Yeah. And I'm just trying to get an idea of  
11 the situations in which you become involved in the Code  
12 enforcement process.

13 MR. HELFAND: Well, ask him a question --

14 Q So --

15 MR. HELFAND: -- 'cause that's a statement.

16 MR. KILPATRICK: I know.

17 MR. HELFAND: That statement that  
18 mischaracterizes --

19 MR. KILPATRICK: Now I'm going to ask a  
20 question.

21 MR. HELFAND: Okay.

22 Q So, you know, we talked about before, for example,  
23 like you got involved in some capacity with the -- with  
24 Veronica Crow and her husband.

25 A Uh-huh.

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1 Q Right? And what other properties have you asked --  
2 What other properties have you asked Brandon to do something  
3 in connection with -- with permits?

4 A I don't recall.

5 Q Are you aware that Brandon Shoaf put a red tag on  
6 the building located at 707 Bradford?

7 MR. HELFAND: Excuse me. That assumes facts  
8 not in evidence.

9 A No.

10 Q No?

11 A No.

12 Q Are you aware of any issues with certificates of  
13 occupancy or permits at 707 Bradford?

14 A Ask the question again.

15 Q Are you aware of any issues with Code compliance,  
16 permitting, certificates of occupancy at the property located  
17 at 707 Bradford?

18 A All's I know, it was issued a certificate --  
19 certificate of occupancy.

20 Q And when was that issued?

21 A I have no idea. I don't recall.

22 Q Recently?

23 A Last three months or so, maybe.

24 Q Okay. So before that, were there issues that you  
25 became involved in, with Brandon Shoaf and that -- and that

**EXHIBIT 9**

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1 property?

2 A I did not become involved. They might have asked  
3 me some questions but that was it.

4 Q Okay.

5 A I don't call the shots.

6 Q Okay. So Brandon -- When you say "they," Brandon  
7 Shoaf is one of the people who may have asked you some  
8 questions about it?

9 A Or Walter.

10 Q Okay. Did you ever ask Brandon Shoaf to send an  
11 email to the -- to any fire marshal's office to -- to do an  
12 ADA inspection on the 707 Bradford property?

13 MR. HELFAND: Objection, assumes facts not in  
14 evidence.

15 A No, because the fire marshal doesn't do ADA.

16 Q Okay. Well, did you --

17 MR. HELFAND: He's right, you know.

18 Q -- ask him to contact the -- any fire marshal to do  
19 any type of inspection on the 707 Bradford property?

20 A No.

21 Q Okay. Now, with respect to food trucks, do you  
22 recall, in August of 2021, for -- the -- there being a  
23 discussion in the open session about proposed revisions to  
24 the food truck ordinance?

25 MR. HELFAND: Objection, assumes facts not in

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1 evidence.

2 THE WITNESS: Do I answer?

3 MR. HELFAND: If you -- If -- If you have a  
4 recollection of that happening. But just because counsel  
5 says something happened, it doesn't mean it happened. That's  
6 my objection. If you remember that happening, though, you  
7 can --

8 A I recall it being revised numerous times.

9 Q Okay. And in October, 2021, at the first City  
10 Council meeting, the City Council approved a revised food  
11 truck ordinance. Do you recall that?

12 A I don't recall the date.

13 Q Okay. And within a few days after that, Mr. Shoaf  
14 went out and towed the food truck from Palapas. Do you --

15 A I was not aware of that.

16 Q Okay. Do you ever drive down Kipp --

17 A Yeah, I --

18 Q -- Street?

19 A -- live on Kipp.

20 Q Right. So do you ever drive by the corner of Kipp  
21 and 6th Street?

22 A Yes.

23 Q Okay. So you don't recall -- You recall seeing a  
24 food truck there for a period of time. Right?

25 A I didn't see a food truck. I saw a trailer.

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1 Q Oh, yeah. Food -- Actually, yeah. Correct. It  
2 was a food trailer. You -- At the Palapas property. Right?

3 A Yes.

4 Q Okay. And is it -- Was it there the last time you  
5 drove by?

6 A Just recently?

7 Q Yeah.

8 A I don't think so.

9 Q Okay. So you understand now that Brandon Shoaf had  
10 it towed from the property. Right?

11 A I -- I don't know that for a fact.

12 Q Okay. So you never talked to Brandon about that or  
13 Mr. Brandon Shoaf about it?

14 A I -- I was totally unaware of it.

15 Q Okay. So you have no role in the towing of that  
16 food truck. Is that your testimony?

17 A I -- I've had no role in that project since the  
18 meeting was cancelled.

19 Q Okay. Has the City issued any citations to any  
20 food truck operators that you're aware of?

21 MR. HELFAND: Objection, calls for  
22 speculation.

23 A I'm not involved in that.

24 Q Okay. So if a citation is issued, who authorizes  
25 that?

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1 A Walter Gant.

2 Q Okay. So Brandon Shoaf does not have the power to  
3 issue citations without his approval?

4 MR. HELFAND: Sorry. That calls for a legal  
5 conclusion. It mischaracterizes the witness' prior  
6 testimony.

7 A What --

8 Q You can answer.

9 A What's the question again?

10 Q So Walter Gant -- or, sorry -- Brandon Shoaf does  
11 not have the power to issue a citation without getting  
12 Mr. Gant's approval?

13 MR. HELFAND: Restate my objections, please.

14 A I don't know for sure what their arrangement is.

15 Q Okay. Who -- Who determines the -- what powers the  
16 building official has? How is that determined?

17 A I would assume it's in his job description.

18 Q Okay. And who prepares the job description?

19 A Walter Gant.

20 Q Okay. So -- So Walter Gant has -- in essence, has  
21 those powers, and he -- he's allowed to authorize the  
22 building official to do certain things, such as towing a food  
23 truck.

24 MR. HELFAND: Objection, legal conclusion.

25 A Again, I wasn't involved in that.

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1 Q Okay. Do you know of any other food trucks in the  
2 City of Kemah that have been towed since the -- the new  
3 ordin-- food truck ordinance was passed in October, 2021?

4 A No.

5 Q No? Do you know if the reason that food truck was  
6 towed from Palapas was due -- a violation of the new food  
7 truck ordinance that was enacted in --

8 A No, no.

9 Q Hold on one second. -- that was enacted in  
10 October, 2021?

11 A No.

12 Q No? Do you -- Have you read the food truck  
13 ordinance that was enacted in October, 2021?

14 A I'm sure I did at that time.

15 Q Okay. Do you have a general understanding of what  
16 would constitute a violation of that ordinance?

17 A Like I said, it's been changed a number of times,  
18 but I believe the latest one says that if you're within  
19 200 feet of a residence, you can't have it.

20 THE REPORTER: "Can" or "can't"?

21 THE WITNESS: Cannot.

22 Q Okay. And that would apply to anyone who applies  
23 for a permit after that revised ordinance was enacted.

24 MR. HELFAND: Objection, calls for a legal  
25 conclusion.

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1           A       There's a "depends" on that because the -- when the  
2       set of plans that are submitted to be reviewed on a project,  
3       at that time, it falls within the ordinance that the plans  
4       were reviewed. Okay?

5           Q       Okay. So at the time the plan -- At the time the  
6       permit is filed, whatever ordinance was in effect at that  
7       time, that's the applicable ordinance?

8                   MR. HELFAND: Objection, legal conclusion.

9           A       Yeah, that would be a legal thing to review.

10          Q       Okay. Okay. Let me ask you this. So if someone  
11       applies for a permit for a food truck and it's put on -- put  
12       on hold, what -- what's the process for dealing with permits  
13       that are placed on hold?

14                  MR. HELFAND: Objection, calls for speculation  
15       and a legal conclusion.

16          A       I'm not sure.

17          Q       Okay. Is there anything that you're aware of in --  
18       in the City ordinances that allows the building official to  
19       place applications on hold?

20                  MR. HELFAND: Objection, legal conclusion and  
21       speculation.

22          A       I don't -- I'm not aware of it.

23          Q       I'm handing you what's been marked Exhibit 14.

24                   (Exhibit 14 marked.)

25                  MR. HELFAND: This is Kemah 85 through 87.



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1 Q Okay. I've handed you a document. It's been  
2 labeled Exhibit 14.

3 A Okay.

4 Q It's a email chain between you, and it looks like,  
5 Kyle Burks and Nick Haby, Wendy Ellis; and the subject is  
6 6th Street. And -- Well, let me ask you this. Who is Nick  
7 Haby?

8 A He was, at the time, our community development  
9 person.

10 Q Okay. Has he had any other positions in the City,  
11 in the City of Kemah?

12 A No.

13 Q Okay. So -- Well, did he ever serve as the -- He  
14 never served as a -- the building official?

15 A No.

16 Q Okay. So what was his -- What were his -- the  
17 scope of his job duties?

18 A He would have been over the building official.

19 Q Okay. So this was before the City Administrator  
20 position was created?

21 A No. Wendy Ellis is the City Administrator.

22 Q Okay. And, let's see. You make a comment in  
23 here -- Who's -- Who's James Gartrell?

24 A Must be -- Well, looks like he's an engineer.

25 Q Okay. Do -- Do you re-- What were y'all discussing

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1 in this email, if you recall?

2 A Looks like we were interested in utilities in the  
3 right-of-way that we were allowing people to build over.

4 Q Okay. And on February 15th, 2018, you -- you sent  
5 an email pointing out the -- Or, you say "all." "It will be  
6 important that -- that all these line up," period.

7 A Uh-huh, and we have discussed that.

8 Q Okay. So is that -- When -- When you're talking  
9 about lining up, are you talking about the decks --

10 A All of it.

11 Q -- that are going to be built out --

12 A Right.

13 Q -- under that 2017 --

14 A Right.

15 Q -- resolution? Okay.

16 A But I've never looked at them, if --

17 Q Sure.

18 A -- that's what you're saying -- Yeah.

19 Q Okay. Okay.

20 (Exhibit 15 marked.)

21 MR. KILPATRICK: Okay. Here you go.

22 MR. HELFAND: Thanks.

23 Q Okay. I've handed you what's been marked as  
24 Exhibit 15.

25 MR. HELFAND: This is 102 -- Kemah 102 through

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1 105.

2 Q And it's a -- At the top it says, "City of Kemah,  
3 Application for Short-Term Rental STR Permit."

4 And if you go to the second page, you'll see that  
5 the -- Matt -- Matt Placek shows as the owner.

6 And on the third page, it shows 606 6th Street,  
7 Units C and D and --

8 Okay. So this is the application that someone's  
9 required to file in order to get a permit to operate  
10 short-term rental units?

11 A Appears so.

12 Q Okay. And if you look on the -- on -- on the first  
13 page, the top right, it says, "On hold."

14 A Okay.

15 Q Do you know why this short-term rental application  
16 was placed on hold?

17 MR. HELFAND: No. Hang on. Assumes facts not  
18 in evidence. Does he know why it -- the words "on hold" are  
19 on there --

20 Q Okay.

21 MR. HELFAND: -- is all he could answer.

22 A This is the first time I've seen this.

23 Q Okay. Well, let me ask you this. Did you know  
24 that Matt Placek had -- and Paige Pitonyak had submitted an  
25 application for a short-term rental permit?

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1 A No.

2 Q Okay. So you never discussed this with Mr. Shoaf?

3 A (NO VERBAL RESPONSE.)

4 Q "No"? You got to --

5 THE REPORTER: Your answer?

6 A No. Sorry. I'm sitting here...

7 Q Okay. And this was submitted -- Well, at least  
8 it -- it's dated May 27th, 2021, right after you were elected  
9 Mayor.

10 A Right.

11 Q And then if you look on the third page, it --  
12 There's another -- There's some more handwriting. It says,  
13 "A change of occupancy permit must be filed, first." Do you  
14 see that?

15 A Uh-huh.

16 MR. HELFAND: Actually, what it says is, "A  
17 change of OCC permit must be filed, first."

18 Q Okay.

19 MR. HELFAND: If you're going to quote the  
20 document, let's quote it correctly.

21 Q What do you -- What is -- Do you know what's being  
22 referred to as "OCC permit"?

23 MR. HELFAND: Calls for speculation as to what  
24 somebody else meant as to "OCC permit."

25 Q You can answer.

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1           A     You know, I don't.

2           Q     Okay. Is it possible that that was a "change of  
3 occupancy permit"?

4                     MR. HELFAND: Everything is possible.

5           Q     Okay.

6                     MR. HELFAND: But that's not a good question.  
7 Let me object for spec--

8                     MR. KILPATRICK: It's a good question to me.

9                     MR. HELFAND: -- speculation.

10                    MR. KILPATRICK: It's your opinion.

11                    MR. HELFAND: Let me know when you're done  
12 talking.

13                    Anything is possible, but that's not a good  
14 question. That's speculation.

15                    MR. KILPATRICK: I like it.

16           Q     So if -- if you read that right now --

17                    MR. HELFAND: I imagine you would.

18           Q     -- in the context of a short-term rental  
19 application, what -- what does that handwriting mean to you?

20                    MR. HELFAND: Objection, speculation. It's  
21 been asked and answered. He told you he doesn't know.

22                    Do you have another question?

23           Q     You can answer.

24           A     Yeah, I don't know.

25           Q     Okay.

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1 A Like I said, I've never seen this before.

2 Q So do all -- If -- If a -- a property that -- If a  
3 person that owns a home in Kemah wants to start -- wants to  
4 get a short-term rental permit, do they also have to file a  
5 change of occupancy permit, first?

6 MR. HELFAND: Objection, calls for a legal  
7 conclusion and speculation.

8 A I don't know the answer to that.

9 Q Okay. So you don't know?

10 A No.

11 Q Okay.

12 (Exhibit 16 marked.)

13 Q Okay. I've handed to you what's been marked as  
14 Exhibit 16.

15 MR. HELFAND: This is Kemah 106.

16 Q And it's a certificate of occupancy application,  
17 and it's the business name T&W Holding, LLC; business  
18 address, 606 6th Street; owner, Matt Placek. And is this  
19 what someone -- Is this the application that a owner's  
20 required to file to get a certificate of occupancy?

21 A It appears so.

22 Q Okay. And, looks like, down here, it shows the  
23 permit fee, \$200. If that -- If -- If -- If those three  
24 lines at the bottom right are filled in, does that indicate  
25 that the permit fee was paid?

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1 MR. HELFAND: Object. It calls for  
2 speculation.

3 A It appears so.

4 Q Okay. Did you know that T&W -- T&W Holding filed  
5 this application for a certificate of occupancy?

6 A This is the first I've seen it.

7 Q Okay. Are you -- Are you familiar with Bureau  
8 Veritas?

9 A Yes.

10 Q Okay. What does -- What does Bureau Veritas do?

11 A They review plans.

12 Q Okay. What else do they do?

13 A Depending on what they were hired for, maybe,  
14 inspections.

15 Q Okay. And who orders inspections from Bureau  
16 Veritas within the City of Kemah?

17 A It depends, when it was.

18 Q Okay.

19 A What's the date on it?

20 Q This would have been July 8th, 2021.

21 A That, probably, would have been Walter Gant. July.  
22 Yeah.

23 Q Okay. So Walter Gant, the -- Just walk me through  
24 how that process works. The -- Walter Gant contacts Bureau  
25 Veritas to perform --

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1 A Services.

2 Q -- inspections. And then what -- what is -- what  
3 happens after that?

4 A You'd have to ask Walter.

5 Q Okay. So you're not involved in that process --

6 A No.

7 Q -- in any way?

8 A No.

9 Q Okay. But sort of like the Crows and Palapas, for  
10 example, sometimes you've -- you've gotten involved in  
11 dealing with permits and inspections and certificates?

12 A Rarely.

13 MR. HELFAND: That mischaracterizes the  
14 witness' former testimony.

15 And then, did you record his answer?

16 THE REPORTER: Yes.

17 MR. HELFAND: Thank you.

18 A (CONTINUING) I said rarely.

19 Q Rarely? Okay. Do you know Daniel Conrad?

20 A Yes.

21 Q Okay. How do you know him?

22 A He's a resident in Kemah.

23 Q Okay. Does -- Does he ever get involved in the  
24 City's, like, issuance or denial of permits to business  
25 owners?



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1 A Not that I know of.

2 Q Had -- Do you recall the City receiving any  
3 complaints from Mr. Conrad about certain businesses in -- in  
4 the City of Kemah?

5 A No, I don't recall.

6 Q Okay. Are y'all friends?

7 A No.

8 Q Does he -- Well, at some point a dispute arose  
9 between the two of you. Correct?

10 A Correct.

11 Q Was that related to a business that he owns?

12 A I don't know that he owns a business.

13 Q Okay. Well, what's the -- What -- What was the  
14 nature of that dispute?

15 A It's going on right now, and I'm in a lawsuit with  
16 him, and I prefer not to spend any more time on --

17 MR. HELFAND: We're not going to talk about  
18 that.

19 Q Okay. All right.

20 THE REPORTER: Say -- What?

21 MR. HELFAND: I said, we're not going to talk  
22 about that.

23 Q Okay. Fair enough.

24 MR. HELFAND: I need to use the bathroom, when  
25 you have time. Just need -- I just need a minute or two, but

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1 I need to use the bathroom. Don't -- You don't have to stop  
2 right now, but when you get to a natural stopping point, let  
3 me know.

4 MR. KILPATRICK: Okay. Well, yeah. Why don't  
5 you go ahead right now.

6 MR. HELFAND: Thank you.

7 MR. KILPATRICK: Some of these are before his  
8 tenure, so...

9 THE VIDEOGRAPHER: Off the record at 3:26 p.m.  
10 (Break.)

11 THE VIDEOGRAPHER: On the record at 3:36 p.m.

12 Q Okay. Mayor Joiner, I'm going to -- handing you  
13 what we marked as Exhibit 17.

14 (Exhibit 17 marked.)

15 MR. HELFAND: Do you have a copy for me?

16 MR. KILPATRICK: Oh, yeah, I do.

17 MR. HELFAND: Thank you.

18 MR. KILPATRICK: Sorry.

19 MR. HELFAND: That's Kemah 77 and 78.

20 Q And this is an email chain between you, Brandon  
21 Shoaf, Dick Gregg, and Walter Gant; and it says, "Regarding  
22 Palapas meeting, 8-23-21."

23 MR. HELFAND: Hang on. This -- We -- I need  
24 to claw this back. This is attorney-client privileged  
25 communication. I'm sorry. We -- We can't use this; and

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1 consistent with the Rules, I'll write you a letter clawing it  
2 back. I should not have produced a document with the City  
3 Attorney.

4 MR. KILPATRICK: Well, I'm not going to get  
5 into what y'all -- what they talked about.

6 MR. HELFAND: Well, you're not even allowed to  
7 have this email. That was my mistake. And the Rules provide  
8 that I'll notify you that I -- I -- I need it back. It's an  
9 attorney-privileged communication.

10 MR. KILPATRICK: This is one of the first  
11 documents you produced.

12 MR. HELFAND: The timing of the production  
13 doesn't have anything to do with what I've just told you. Do  
14 you have other questions about something else?

15 You can either agree -- I'll give you the  
16 Rule. You can either agree to give it to me today and  
17 destroy any other copies or I'll write you a letter about it.  
18 But we're not going to answer questions about it because I  
19 shouldn't have given it to you. That was my mistake, but the  
20 Rules provide a remedy for that. But it is an  
21 attorney-client privileged document.

22 MR. KILPATRICK: Well, I won't ask him about  
23 it now, but I reserve the right to take this up with the  
24 Judge, if we need to.

25 MR. HELFAND: I -- I will send you what people

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1 call a "clawback letter," and if you do not wish to return it  
2 because you don't think you're required to under the Rules,  
3 then we'll -- we can take that up with the Judge.

4 And if the Judge believes that it's not  
5 privileged and that you're entitled to ask questions about  
6 it, then we can deal with that at that time.

7 MR. KILPATRICK: Yeah, that's what I'm saying.

8 MR. HELFAND: But why don't we -- We can pre--  
9 We can, probably, preclude the necessity of a round trip.  
10 What do you want to ask him about that, that wouldn't be  
11 privileged, about a meeting he had with the City Attorney?

12 MR. KILPATRICK: Well, look, I'll ask the  
13 question and see if you --

14 MR. HELFAND: Sure.

15 MR. KILPATRICK: -- if you have a problem with  
16 it and then --

17 MR. HELFAND: Yeah.

18 MR. KILPATRICK: -- we'll deal with it, as --  
19 question by question.

20 MR. HELFAND: But we're not -- I'm not going  
21 to allow --

22 MR. KILPATRICK: I'm not going to ask a lot  
23 about it.

24 MR. HELFAND: Hang on. I'm not going to allow  
25 this to be part of the deposition transcript, in light of the

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1 fact that I pointed out that it was inadvertently produced.

2 We'll ask the court reporter, put this in a  
3 separate, sealed envelope. Okay? She'll keep it but put it  
4 in a separate sealed envelope. Is that okay with you?

5 MR. KILPATRICK: That's fine.

6 MR. HELFAND: Pending a ruling by the Court.

7 MR. KILPATRICK: Okay. That's fine.

8 MR. HELFAND: Great.

9 Q Okay.

10 MR. HELFAND: Anyway, she'll know that.

11 Q Mr. Joiner, do you recall -- Or, sorry --  
12 Mayor Joiner, do you recall attending a meeting in August,  
13 2021 --

14 MR. HELFAND: Don't do it --

15 Q -- regarding --

16 MR. HELFAND: -- with reference to this  
17 letter. Sorry.

18 THE WITNESS: Okay.

19 MR. HELFAND: He's asking if you -- Because  
20 we're not supposed to be using that letter.

21 Q And I'm -- I'm not ask-- going to ask what y'all  
22 talked about at the -- the meeting I'm asking about. I'm  
23 just asking you some basic questions.

24 Did you meet with Brandon Shoaf and Walter Gant to  
25 discuss the -- the issues related to the Palapas in August of

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1 2021?

2 A If I hadn't seen that, I would not recall that.

3 Q And, you know, I'm just asking about whether you  
4 ever -- you had a meeting with them to discuss issues related  
5 to Palapas. So is the answer, yes?

6 MR. HELFAND: He's answered the question.

7 A Yeah. I -- I don't recall, and I won't go any  
8 further.

9 Q But -- Well -- But sitting here today, you -- you  
10 recall having a meeting at some point with Brandon Shoaf and  
11 Walter Gant to discuss issues related to --

12 A No, I don't.

13 Q -- Palapas.

14 A That's why I'm...

15 Q Well, you did see the email, and I know we're  
16 clawing it back, but it doesn't mean it erased your memory.  
17 I'm just asking if you had the meeting.

18 MR. HELFAND: Do you remember having a  
19 meeting?

20 A Like I say, I saw that, and I said, "Let's meet at  
21 City Hall." I don't remember the meeting.

22 Q Okay. But you -- But you -- And I'm not saying  
23 what happened at the meeting. I'm saying do you recall --

24 A No.

25 Q -- whether y'all met or not?

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1 A No.

2 Q Okay. Since you've been Mayor, how many times have  
3 you met with Walter Gant to discuss issues related to  
4 Palapas?

5 A Just with Walter Gant? I only recall one meeting.

6 Q Okay. Approximately, when was that?

7 A It was when we were going to have a meeting here,  
8 and it got cancelled.

9 Q Okay. And was that the meeting that I was going --  
10 going to attend, along with Mr. Gregg, to discuss Palapas?

11 A I don't know if you were attending or, what.

12 Q Okay. And there was a -- if -- you may recall,  
13 there was a weather event that Mr. Gregg had to cancel the  
14 meeting because there was a -- some emergency issues the City  
15 was dealing with at that point?

16 MR. HELFAND: I'm sorry. That assumes facts  
17 not in evidence.

18 Do you want to ask him if he knows why it was  
19 cancelled? You can't tell him the answer to -- what you want  
20 the answer to be. That assumes facts not in evidence. Do  
21 you want to ask him why it was cancelled?

22 A I don't recall that meeting.

23 Q You don't -- You don't know why it was cancelled?

24 A No.

25 Q Okay.

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1 MR. HELFAND: By the way, the Rule is  
2 26(b)(5)(B), and I am telling you now that -- I'm notifying  
3 you that you received information that is subject to  
4 attorney-client privilege.

5 You are required to promptly return, sequester  
6 or destroy the information and any copies. You may not use  
7 it or disclose the information until the claim is resolved.  
8 If you disagree with the claim, you should tell me, and we'll  
9 take it up with the Judge. But you can't do anything with it  
10 until that claim's been resolved.

11 But if you, honestly, think an email like --  
12 like that is not a -- privileged, you let me know.

13 MR. KILPATRICK: All -- All I said is that  
14 I -- I reserve the right to -- I'm going to look -- I'm going  
15 to look into this after the deposition --

16 MR. HELFAND: The Rule requires --

17 MR. KILPATRICK: -- and if --

18 MR. HELFAND: -- that you sequester it and not  
19 use it for any purpose or show it to anyone else. As long as  
20 you do that, that's fine. And you --

21 MR. KILPATRICK: That's what I'm doing.

22 MR. HELFAND: -- let me know if you believe  
23 that it's not privileged. But right now, we can't use it for  
24 any purpose.

25 MR. KILPATRICK: That's fine.



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1 MR. HELFAND: But since it's been a -- made  
2 a -- since we've been -- identified on the record of the  
3 deposition, we'll have the court reporter seal it up and,  
4 she'll keep it sealed. And then you and I will give her  
5 joint instructions on what to do with it, either we've agreed  
6 or the Court ordered.

7 MR. KILPATRICK: That's fine.

8 MR. HELFAND: Great.

9 THE REPORTER: Okay.

10 MR. HELFAND: Thirty-five years without a  
11 mistake and then, there you go. And I went through these  
12 things really carefully on my own.

13 UNIDENTIFIED SPEAKER: No, that's not what  
14 happened.

15 Q Okay. Mayor Joiner, have you ever asked Brandon  
16 Shoaf, when -- when he was the building official, to enforce  
17 deed restrictions for any subdivisions in the -- the City of  
18 Kemah?

19 A I have not asked him to enforce deed restrictions.

20 Q Okay. Did you ask him to do anything in connection  
21 with the Bay Breeze subdivision?

22 A I -- Yes, I asked him -- Because we have an  
23 ordinance, I said, "Please, do not permit any facility in  
24 Bay Breeze that is not single family," as the deed  
25 restrictions say.

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1 Q Okay. And what -- Which ordinance are you  
2 referring to?

3 A I -- It's a number. Okay?

4 Q Okay. But, I mean, it -- Just in general, what  
5 does it say?

6 A Just what I said. It, basically, says, if it's not  
7 single family, it is not to be permitted.

8 Q Okay. If there are deed restrictions?

9 A In this particular case, there are.

10 Q Okay. Well -- And just to clarify. You know --

11 A We're talking about Bay Breeze.

12 Q -- does that ordinance only apply to a subdivision  
13 that has deed restrictions?

14 A Yes.

15 Q Okay. Have you -- And so -- Well, what -- what  
16 exactly did you tell Brandon Shoaf to do in connection with  
17 that?

18 A I just, in passing, said, "Moving forward, you  
19 weren't aware of this ordinance. Please, follow it."

20 Q Okay. So no building permits for anything other  
21 than single-family in the Bay Breeze subdivision. Is that --

22 A Correct.

23 Q Okay. Have you done that, something similar for  
24 other subdivisions in the City of Kemah?

25 A I don't recall doing it in any other subdivision,

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1 except Bay Breeze.

2 Q Did you ever instruct Brandon Shoaf to not issue  
3 any short-term rental permits in any subdivisions on the same  
4 basis?

5 A There was discussions, but our City Attorney  
6 stated that --

7 MR. HELFAND: Oh. Wait.

8 THE WITNESS: Wait. I can't say anything, can  
9 I?

10 MR. HELFAND: Yeah. You can't talk about what  
11 the City Attorney you told you.

12 THE WITNESS: Okay.

13 Q Well, was this discussed in an -- in an open  
14 session City Council meeting?

15 A I don't know -- recall if it was closed or open.

16 Q Okay. What other types of directives or  
17 instructions have you given Brandon Shoaf that would -- that  
18 are somewhat similar, you know? And just to clarify my  
19 question, in -- With Bay Breeze, you're referring to an  
20 ordinance that only allows single family in a deed-restricted  
21 subdivision. Correct?

22 A Let me clarify.

23 Q Okay.

24 A I never really gave Brandon specific instructions.  
25 I went through Walter Gant --

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1 MR. HELFAND: I was just about to --

2 A -- who gave those instructions.

3 Q Okay.

4 MR. HELFAND: I was just about to object that  
5 you mischaracterized his testimony. What he said was, he  
6 pointed out the existence of an ordinance that he thought  
7 Mr. Shoaf was not aware of.

8 Q Okay. So you mentioned -- So I think you said  
9 something about, in passing, you mentioned something to  
10 Brandon Shoaf about -- about that. What did you mean by  
11 that?

12 A Well, it was probably in our meeting. I never met  
13 with Brandon by himself. It was always with Mr. Gant.

14 Q Okay. So you and Brandon have never, just the two  
15 of you, met?

16 A No, I don't recall ever doing that.

17 Q Okay.

18 A I haven't met with any City staff by myself.

19 Q Okay.

20 A That's not my role.

21 Q Have you give -- Have you given Walter Gant any  
22 directives for anything related to -- at the Palapas  
23 property?

24 A No.

25 Q Okay. Have you approved any directives,

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1 suggestions or other recommendations that Walter Gant made --  
2 may have made to you about anything related to Palapas?

3 MR. HELFAND: Object to vague. But you can  
4 answer.

5 A I don't recall any.

6 Q Okay. So back when you were Mayor the first time  
7 around, who was the building official back then?

8 A You know, we went through so many. I don't recall  
9 their names.

10 Q Okay. Do you recall a building official, Jack  
11 Friday?

12 A Oh, wow, he goes way back.

13 MR. HELFAND: Is that what he did after he  
14 left the LAPD?

15 A He -- He -- He was not building inspector or  
16 whatever, when I've been Mayor.

17 Q Okay.

18 A It goes back further than that.

19 Q Okay. Well -- And how -- how long have you lived  
20 in the City of Kemah, again?

21 A 2001.

22 Q 2001. Okay. So was he the building official --  
23 He -- He was the building official for a period of time while  
24 you lived -- since you've lived in the City of Kemah. Right?

25 A Correct.

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1 Q Okay. Do you remember, there -- there were some  
2 news articles that came out back then, about how he had not  
3 hit -- he had not documented or kept good records of all the  
4 certificates of occupancy with respect to most of the  
5 businesses in the City, you know...

6 A I wouldn't have been a part of any of that.

7 Q But I -- I just -- Do you -- Do you remember that  
8 happening?

9 A No.

10 Q No? So when -- when a ordinance or -- or -- or  
11 when any agenda item, I guess, is -- is approved at a City  
12 Council meeting, what -- how is there -- what records are  
13 kept to show that City Council approved any given item on the  
14 agenda?

15 A As Mayor, I'm not the keeper of the records.

16 Q Okay. Well, the -- Is it the City Secretary?

17 A Correct.

18 Q Okay. And would those -- any agenda items that are  
19 approved at City Council meetings, would those be reflected  
20 in the minutes that the City Secretary prepares?

21 A Should be.

22 Q Okay. So if someone wanted proof that a certain  
23 item on the agenda was voted on and approved by Council, that  
24 would be -- you -- you would look at the meeting minutes  
25 to -- to show proof that it was approved. Is that a fair

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1 statement?

2 A You should be able to do that.

3 Q Okay. And when permits, certificates of occupancy,  
4 and, you know, registrations, things of that nature, what's  
5 the chain of custody for -- for those documents?

6 MR. HELFAND: Let me just object that it  
7 assumes facts not in evidence, that is, is there any -- any  
8 chain of custody, which is a criminal law issue but -- not a  
9 civil law issue. But -- If what you mean is, where do they  
10 go, is that what you're asking?

11 Q Or -- Yeah. Just to put it in more simple words,  
12 what -- what -- how are those records maintained?

13 A You'd have to ask Walter, who's over our City -- or  
14 who works with our City Secretary.

15 Q Okay. Is -- Are -- Are there -- Are they kept in  
16 paper files, digital files or both?

17 A I would say we're both.

18 Q Okay. And how do you control who has access to the  
19 paper files?

20 A It's not under my duties.

21 Q Okay. And that file room that we walked by, on the  
22 way in here that has the door laying on the ground, is that  
23 where the records are -- are kept?

24 A Some of them, I believe.

25 Q Okay. So right now, there's no door on -- on that

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1 room --

2 A That's correct.

3 Q -- as we sit here today?

4 A That is correct.

5 Q Well, why --

6 MR. HELFAND: But you also don't know what's  
7 in that room, so what difference does that make to this case?

8 MR. KILPATRICK: Well, it does matter to this  
9 case.

10 MR. HELFAND: No, it does not. It has no  
11 bearing on any issue in this lawsuit, whether there is or is  
12 not a door on a room in City Hall, the contents of which you  
13 don't know.

14 Q Okay.

15 MR. HELFAND: But I'll --

16 Q If there's a --

17 MR. HELFAND: If you think that the --

18 Q If there's a permit or certificate of occupancy for  
19 Palapas property, would it be kept in that room?

20 MR. HELFAND: Objection, calls for  
21 speculation.

22 A I -- I don't know. I'm -- I'm not the filer.  
23 It could be in a file cabinet. I don't know.

24 Q Okay. Well, why -- why was the door taken off of  
25 that room, just out of curiosity?



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1           A       That used to be two rooms, and it was combined into  
2 one room, and it took a lot of time to order the door. And  
3 the door will be installed by Public Works, but they're down  
4 two people right now, so, hadn't been a high priority --

5           Q       Okay.

6           A       -- for them.

7           Q       It -- Well, isn't it true, City Council approved  
8 something to put that -- a door on that room to control  
9 access to the files?

10          A       Uh-huh.

11          Q       And so you, as Mayor, unilaterally decided to take  
12 it off?

13          A       I don't have that con-- control. Sorry.

14          Q       Okay. Okay. When was that door removed?

15          A       Last couple of months.

16          Q       Okay.

17          A       About the time that the Council said, "Let's get a  
18 door."

19          Q       So what was the concern -- What -- What was  
20 discussed at the City Council meeting in the open session  
21 about putting a door on there? What -- What was the  
22 concern?

23                   MR. HELFAND: There's two questions there.  
24 "What was discussed in open session?", he can answer. "What  
25 was somebody's concern?", is within the legislative

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1 privilege. So which --

2 Q Okay. What was discussed in open session about --

3 MR. HELFAND: About --

4 Q -- the door?

5 MR. HELFAND: -- putting a door on the room.

6 A Said that it would be under lock and key.

7 Q Okay. Have there been problems with missing files  
8 or anything in the past?

9 A There's another case that I can't really talk about  
10 at City Hall, which is concerned about records.

11 MR. HELFAND: But it's not about -- But -- You  
12 can answer his question as to whether anybody's identified  
13 missing records --

14 A (CONTINUING) Yeah. I'm not aware.

15 MR. HELFAND: -- records that the City had but  
16 now are missing.

17 That's what you're asking. Right?

18 MR. KILPATRICK: Yeah.

19 MR. HELFAND: Okay.

20 A (CONTINUING) I don't know of any.

21 MR. HELFAND: The Mayor's talking about  
22 something else.

23 MR. KILPATRICK: Okay.

24 Q And with respect to -- Have there been any issues  
25 with files being altered or documents being added that

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1 weren't supposed to be there?

2 A Not that I'm aware of.

3 Q Okay. Do you recall when the -- Veronica Crow and  
4 her husband, when they attended the February 16th, 2022, City  
5 Council meeting, pointed out that there were maps that had  
6 been swapped out in their permit application? Do you  
7 remember her talking about that?

8 A No.

9 MR. HELFAND: Let me object that that assumes  
10 facts not in evidence. It mischaracterizes the witness'  
11 prior testimony.

12 Q Well, to refresh your recollection, do you remember  
13 there being discussion in open session about the flood  
14 rate -- or, the flood map that was in her file?

15 A I recall discussion on the -- really, the civil  
16 drawings. That's all recall.

17 Q Okay. So part of the reason that, in open session,  
18 the Council discussed putting a door on there is not just for  
19 missing files but for files that were altered?

20 A Oh, no.

21 MR. HELFAND: No. You just mis-- completely  
22 mischaracterized. He just said they just want them locked  
23 up. There's been no evidence of alteration, no evidence of  
24 missing files.

25 MR. KILPATRICK: Okay. That's fine.

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1 Q Okay. So the answer's, no?

2 MR. HELFAND: But it also has nothing to do  
3 with this case, so -- You're not going to -- You're -- You're  
4 not just going to use your deposition time to ask interesting  
5 questions about what you walked by when you came in to do the  
6 deposition.

7 MR. KILPATRICK: Well, sorry, but Brandon  
8 Shoaf, on several occasions, said that there are no permits  
9 on file. And I do have proof --

10 MR. HELFAND: Well, then, let's show that --

11 MR. KILPATRICK: -- that -- that there --

12 MR. HELFAND: -- to the Court. But why the  
13 door --

14 MR. KILPATRICK: Yeah, I know.

15 MR. HELFAND: -- isn't on the room --

16 MR. KILPATRICK: Well, that's why I'm asking.  
17 That's why it's relevant.

18 MR. HELFAND: No. Why the door isn't on the  
19 room has nothing to do with this case.

20 MR. KILPATRICK: That's why I'm asking about  
21 it.

22 MR. HELFAND: You --

23 MR. KILPATRICK: And I can ask --

24 MR. HELFAND: You didn't know there wasn't a  
25 door on the room 'til you came here to take a deposition.

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1 MR. KILPATRICK: That's right.

2 MR. HELFAND: Okay. So it has nothing to do  
3 with this case.

4 Do you have other questions for the Mayor?

5 MR. KILPATRICK: Of course, I do.

6 MR. HELFAND: And, of course --

7 Q What --

8 MR. HELFAND: -- it bears pointing out --

9 Q What's the --

10 MR. HELFAND: -- there was a door on the room  
11 at all times that Mr. Shoaf worked here --

12 Q Is --

13 MR. HELFAND: -- according to the Mayor's  
14 testimony.

15 Q Is the door on the -- on the file room what  
16 Mr. Gant has referred to as a lock-down procedure?

17 MR. HELFAND: Well, hang on. He can't testify  
18 what Mr. Gant referred to. That calls for speculation.

19 MR. KILPATRICK: Well, if he knows.

20 MR. HELFAND: Well, then -- then, you have to  
21 ask a different question.

22 MR. KILPATRICK: I said --

23 MR. HELFAND: "Has Mr. Gant ever told you what  
24 he meant by a lock-down procedure?"

25 MR. KILPATRICK: That's a trial objection,

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1 like --

2 MR. HELFAND: No, no. You can't -- Man. He's  
3 not going to testify --

4 MR. KILPATRICK: Okay.

5 MR. HELFAND: -- to what Mr. Gant means by  
6 something 'cause that's speculation, unless he says he knows.

7 MR. KILPATRICK: That's what -- Exactly my  
8 point and I --

9 MR. HELFAND: Okay.

10 MR. KILPATRICK: -- I think by --

11 MR. HELFAND: Well, that's my objection.

12 MR. KILPATRICK: -- inserting your comments,  
13 it's, you know -- Anyway...

14 MR. HELFAND: (MAKES SOUND.) You have this  
15 bad habit of saying a lot of stuff under your breath that's  
16 just totally inappropriate in a deposition.

17 If you have a question, ask the question and  
18 wait for the answer. If there's an objection, you have to  
19 wait for that and then see if the witness has an answer.

20 Would you like the answer to the question  
21 whether he knows what Mr. Gant means by that term, whether it  
22 has --

23 MR. KILPATRICK: Yeah.

24 MR. HELFAND: -- anything to do with the door?  
25 Okay. Do you know?

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1 A What was the question?

2 Q Lock-down procedure.

3 MR. HELFAND: Yeah. What was the procedure?

4 A I've never heard that.

5 Q Okay. Well, Mr. Gant's never used that term?

6 A No.

7 Q Okay.

8 A Not around me.

9 MR. HELFAND: Okay. It got resolved.

10 MR. KILPATRICK: Okay. See how easy that was.

11 Q What is Collin Jones' position with the City?

12 A He's a police chief.

13 Q Police chief?

14 A Yes.

15 Q Okay. And when did -- when did he start in that  
16 role?

17 A Seems like it was late September, October of last  
18 year.

19 Q Did -- Did he implement lock-down procedure for the  
20 file room?

21 A I've never heard that from him, either.

22 Q Or -- Or -- Well, what -- what -- Is there another  
23 term that he used for the locking up the file room?

24 A He's been going through and securing City Hall.

25 Q Okay.

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1 A Uh-huh.

2 Q So who -- who instructed him to do that?

3 A I believe he took that on himself --

4 Q Okay.

5 A -- as our police chief.

6 Q So what -- what kind of things has -- has he done  
7 thus far to secure City Hall?

8 A They've added some Coded doors.

9 Q Okay.

10 A And, pretty much, that's it.

11 Q Okay. So that wasn't part of -- that's not why the  
12 door was added to the file room?

13 A The door was added because we did renovations in  
14 there to make that room larger. What had happened is, we had  
15 a plan room down here, and they chose to use it as an office,  
16 so they moved the plan room in with the files.

17 Q So is that door supposed to be locked when -- when  
18 it's on?

19 A Yes.

20 Q Okay. And so who maintains who -- who goes in and  
21 out of that room or who controls that?

22 A At that point, it would be only those people that  
23 should go in and have access to the files.

24 Q Okay. And who within the City has access to those  
25 files?



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1           A     To me, it would be the Court side and possibly City  
2     Secretary.

3           Q     Okay. No -- No one else?

4           A     But, again, I don't make that call. Okay. That'd  
5     be a Walter Gant call.

6           Q     Okay. Have any files from that room been taken out  
7     of this building?

8           A     I would not know that.

9           Q     Okay. So as far as you're aware, none --

10          A     No.

11          Q     -- have been taken.

12                Have you ever asked Brandon Shoaf to prepare a  
13     report or spreadsheet showing all the properties that are not  
14     in compliance with any Code or ordinance?

15          A     No.

16          Q     Has Brandon Shoaf ever provided you a spreadsheet  
17     or other report showing a list of all properties that were  
18     not in compliance with Code or any ordinance?

19          A     I don't recall ever seeing one.

20          Q     Okay. What -- In the event of a declaration of  
21     disaster or, I guess, hurricane, freeze or something of that  
22     nature, you, as the Mayor, have the power to declare a -- a  
23     disaster.

24          A     Yes.

25          Q     Is that right?

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1                   Okay. And if a disaster is declared, how -- how  
2 does that change the process for making repairs or getting  
3 building permits?

4                   MR. HELFAND: Objection, legal conclusion.

5           A       Best of my knowledge, that's never happened since  
6 I've been Mayor.

7           Q       Okay. You recall the -- the freeze in February,  
8 2021, when the City...

9           A       Yes; I was not Mayor.

10          Q       Right. But -- But you lived in Kemah?

11          A       Yeah, uh-huh.

12          Q       Okay. And Mayor -- So Mayor Gail -- or, excuse --  
13 Terri Gail was the Mayor at that time. Correct?

14          A       Right.

15          Q       And do you recall if she declared a -- a disaster  
16 and invoked the emergency management plan?

17                   MR. HELFAND: Let me object that those --  
18 That's a multifarious question 'cause those are two different  
19 things.

20                   MR. KILPATRICK: Okay. I'll rephrase.

21                   MR. HELFAND: All right.

22          Q       Do you recall that Terri Gail declared a disaster  
23 in the City of Kemah in February, 2021?

24          A       I do not recall that.

25                   MR. HELFAND: Let me object. That assumes

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1 facts not in evidence.

2 Q Okay. Have you ever declared a disaster in the  
3 City of Kemah in --

4 A No.

5 Q -- while you were Mayor?

6 A No.

7 Q No? Does the City of Kemah have an emergency  
8 management plan?

9 A Yes.

10 Q Okay. Is it -- And it's a written document.  
11 Correct?

12 A Yes, yes.

13 Q Where -- Where can that be found?

14 A Our Chief, police chief, is our emergency  
15 management coordinator.

16 Q Okay. And have you read the emergency management  
17 plan?

18 A Yes, 'cause I'm the emergency management director.

19 Q Okay. So as the emergency management director, do  
20 you -- you have the power to take certain actions without  
21 Council approval?

22 A That is correct.

23 Q Okay. Do any of those powers relate to building  
24 permits, Code compliance --

25 A No.

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1 Q -- or any things of that nature?

2 A No.

3 Q What -- What types of things, for example?

4 A This is like calling for voluntarily evacuation --

5 Q Okay.

6 A -- keeping our citizens informed. I -- I've called  
7 a voluntary evacuation one time and -- and so we were on  
8 Facebook and Blackboard Connect to keep our citizens updated  
9 and things like that.

10 Q Okay. Understand. Is there a place online to find  
11 that document, to your rec--

12 A I -- I -- You know, I'm not a tech person, so I  
13 don't know.

14 Q Okay.

15 A I would -- I would assume so.

16 Q Okay. Just sitting here today and based on what  
17 you know about the Palapas property, what does Mr. Placek  
18 need to do to get a certificate of occupancy for his  
19 building?

20 MR. HELFAND: Don't answer that question  
21 because it invades the attorney-client privilege.

22 Q Well -- And don't -- don't answer it to the extent  
23 that it involves communications with your lawyer. But, you  
24 know, if -- if my client wanted to go do everything required  
25 to get a certificate of occu-- occupancy for the building,

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1 what does he need to do?

2 MR. HELFAND: That is privileged information  
3 because it comes from communications with the City Attorney  
4 and the City's attorney. Don't answer that question.

5 But let me see if we can fix privilege  
6 problem. Do you know of the compliance or noncompliance of  
7 any of the plaintiff properties with City ordinances and  
8 Codes.

9 THE WITNESS: No.

10 MR. HELFAND: Okay. Then we don't need to  
11 worry what specifics there are.

12 Q Who -- Who would know?

13 MR. HELFAND: Speculation.

14 A I would think you'd need to ask Walter Gant.

15 Q Okay. Well, if Walter Gant testified that he  
16 doesn't know, then who would -- who would know?

17 MR. HELFAND: Excuse me. I don't think Walter  
18 Gant was asked that question. But, again, you shouldn't ask  
19 questions based upon your interpretation of somebody else's  
20 testimony.

21 What you're asking him is, "Anybody other than  
22 Mr. Gant at the City that you're aware of who would know the  
23 compliance status?" That's what you're asking.

24 MR. KILPATRICK: I can ask the question  
25 however I want to --

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1 MR. HELFAND: No, you can't.

2 MR. KILPATRICK: -- and you can object.

3 MR. HELFAND: You can't ask an objectionable  
4 question.

5 MR. KILPATRICK: You can object --

6 MR. HELFAND: Yes, that's --

7 MR. KILPATRICK: -- and I can rephrase the  
8 question.

9 MR. HELFAND: -- what I did. Yeah, that's  
10 what I just did.

11 MR. KILPATRICK: But that's just so  
12 unnecessary how you're doing this over and --

13 MR. HELFAND: Well, what's unnecessary --

14 MR. KILPATRICK: -- over and over again.

15 MR. HELFAND: -- is for you to make speeches,  
16 then ask a question. You just ask questions.

17 The deposition is to proceed as if it were in  
18 Court. In Court you're not allowed to tell a -- a witness  
19 what you think some other witness testified to. You're just  
20 supposed to ask questions.

21 MR. KILPATRICK: That's a trial objection.

22 MR. HELFAND: There's no such thing as a trial  
23 versus deposition --

24 MR. KILPATRICK: Yes, there is.

25 MR. HELFAND: Do you understand -- No.

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1 Listen. The Rule, I'll read it to you, says, "The deposition  
2 shall proceed under the same Rules at -- as if in Court,"  
3 with the exception of Rules 6, 15, and one other of the Rules  
4 of Evidence. That's --

5 MR. KILPATRICK: Really?

6 MR. HELFAND: -- what the Rule says. Yeah.

7 MR. KILPATRICK: So you can make a hearsay  
8 objection that -- during -- an objection --

9 MR. HELFAND: You don't have to make a hearsay  
10 objection, but, yes, you can make a hearsay objection.

11 MR. KILPATRICK: It's not appropriate in a  
12 deposition.

13 MR. HELFAND: But this is not -- I'm not  
14 making a hearsay objection. I'm making a speculation  
15 objection, so leave hearsay somewhere else because it's got  
16 nothing to do with what we're talking about.

17 The deposition proceeds as if in Court.  
18 There's no such thing as "that's a trial objection."

19 MR. KILPATRICK: Yeah, it is. Hearsay.

20 MR. HELFAND: In your mind. I get it. He's  
21 not -- If you want him to answer the question whether he  
22 knows of anybody else, that's fine; but you don't predicate  
23 it by saying, "If Mr. Gant told me this," 'cause that's not a  
24 question --

25 MR. HELFAND: I can say whatever I want to.

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1 Here --

2 MR. HELFAND: Right. But he's not going to  
3 answer that.

4 MR. KILPATRICK: Let's proceed.

5 Q So if Mr. Gant doesn't know the answer to that  
6 question, then who would my client go to, to find out the  
7 answer to that question?

8 MR. HELFAND: Objection, speculation.

9 A I still say that Mr. Gant is the place to go.

10 Q Okay. To your knowledge, has Mr. Gant ever told my  
11 client what needs to be done to get a certificate of  
12 occupancy issued?

13 A I have no idea.

14 Q Just wrap up that issue. You know, sitting here  
15 today, you don't know of any issues at the Palapa property  
16 that are not in compliance with any Code, City Code or -- or  
17 Building Code or City ordinance?

18 MR. HELFAND: Objection.

19 A No.

20 MR. HELFAND: Witness has tes-- That  
21 mischaracterizes his testimony. He's testified he doesn't  
22 know one way or the other.

23 Q You can answer.

24 A No.

25 MR. KILPATRICK: Want to take a short break?



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1 MR. HELFAND: Sure.

2 THE VIDEOGRAPHER: Off the record at  
3 4:17 p.m., ending Card 2.

4 (Break.)

5 THE VIDEOGRAPHER: On the record 4:28 p.m.,  
6 beginning Card 3.

7 Q Okay. Mayor Joiner, who -- who is the current  
8 building official for the City of Kemah?

9 A His name's Alfonso. He just started working with  
10 us.

11 Q Okay. You don't -- Do you know his last name?

12 A No. Sorry, I don't.

13 Q Oh, that's okay. Was a -- Was there a committee  
14 formed to vet candidates and interview them and things of  
15 that nature?

16 A Yes.

17 Q Okay. Was there a similar process that you're  
18 aware of for Brandon Shoaf?

19 A I don't know. He was before my time.

20 Q Okay. And so how many -- how -- how long did it  
21 take to find a new building official after Brandon Shoaf's  
22 employment was terminated?

23 A I couldn't tell you the number of days, but it  
24 wasn't too long.

25 Q Okay. And so, in the interim, who -- who -- during

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1 that period of time where there was no building official,  
2 who -- who handled the duties of the building -- building  
3 official?

4 A Probably, Veritas.

5 Q Bureau of Veritas?

6 A Uh-huh.

7 Q Okay. Were -- Were you on the committee --

8 A No.

9 Q -- to select -- Okay.

10 A No.

11 Q Who -- who was on that committee?

12 A You know, I'm not sure who all was on it. I  
13 believe Isaac Saldana and, maybe, Teresa Vazquez-Evans from  
14 the Council and then I'm not sure here.

15 Q Okay. And to hire the -- the new -- to hire  
16 Alfonso, the new building official, was that put up for a  
17 vote before City Council?

18 A You know, I -- I -- I'm really not sure. I believe  
19 it was because he was a community development director for  
20 us, so I think it would have taken Council approval.

21 Q Okay. So do you -- Comparing Alfonso to -- to  
22 Brandon Shoaf, do you think Alfonso's more qualified for the  
23 job?

24 A I didn't do the interview.

25 MR. HELFAND: Yeah.

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1 Q Okay. Well -- But he's been -- How long has he  
2 been in that role?

3 A I don't know. Six weeks, maybe.

4 Q Okay. Have -- Any complaints so far?

5 A Not that I'm aware of.

6 Q Okay. I notice there have been some videos made of  
7 City Council meetings made by Wayne Dolcefino?

8 A Yes.

9 Q Did you hire him to --

10 A No.

11 Q -- to make those -- or -- Directly or indirectly?

12 A No.

13 Q So you -- you haven't paid any compensation to  
14 Wayne Dolcefino --

15 A No.

16 Q -- directly or indirectly?

17 A No.

18 Q Do you know who hired him?

19 A No.

20 Q Okay. Well, we've talked about the short-term  
21 rental ordinances, but, in general, are -- are you in favor  
22 or opposed to short-term rentals?

23 MR. HELFAND: That's in the executive  
24 privilege -- sorry -- legislative privilege. He's not going  
25 to answer questions about what he -- positions related to the

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1 City that he favors, disfavors, or his opinion on those.

2 MR. KILPATRICK: Well, he doesn't vote -- vote  
3 on them.

4 MR. HELFAND: That's an interesting point that  
5 has nothing to do with what I just told you. He's privileged  
6 not to answer questions about his position on issues that  
7 come before the City.

8 Q Before you were the Mayor, before you were elected  
9 as Mayor in 2021, were you in favor or against short-term  
10 rentals?

11 MR. HELFAND: You -- You -- I don't think you  
12 understand the privilege. When he had the opinion doesn't  
13 matter now that he's a public official. You're not entitled  
14 to inquire as to his thought processes regarding matters that  
15 come before the City. No. Any other questions?

16 MR. KILPATRICK: I don't think you're right  
17 about that but --

18 MR. HELFAND: Well, I --

19 MR. KILPATRICK: -- it's not a big deal.

20 MR. HELFAND: You're entitled to your opinion,  
21 but I'm not going to change anything today.

22 It also has no bearing on this case  
23 whatsoever, since, as you pointed out, the Mayor takes no  
24 action as it relates to any plaintiff in this lawsuit.

25 MR. KILPATRICK: Well, that's not necessarily

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1 true, unless it's been demonstrated --

2 MR. HELFAND: It is necessarily true because  
3 he does not act as the -- as -- on the -- He does not vote,  
4 and he does not direct the actions of staff, as he's  
5 testified. So it is not -- not necessarily true. It is  
6 actually necessarily true. It has nothing to do with this  
7 lawsuit.

8 MR. KILPATRICK: I disagree, but doesn't  
9 matter. We'll go ahead.

10 MR. HELFAND: It's okay.

11 MR. KILPATRICK: Okay.

12 MR. HELFAND: You know what deGrasse Tyson  
13 would say, "You can have your own opinions, but you can't  
14 have your own facts."

15 MR. KILPATRICK: Got to come up with some  
16 better ones than that.

17 MR. HELFAND: I'm sorry. I didn't hear what  
18 you said.

19 MR. KILPATRICK: Don't -- Don't worry about  
20 it.

21 MR. HELFAND: I don't worry about it, but I  
22 don't appreciate it.

23 (Whereupon, reporter asks for clarification;  
24 briefly off the record.)

25 Q I'm handing you what's been marked as Exhibit 18.

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1 (Exhibit 18 marked.)

2 MR. HELFAND: This is Kemah 165 to 167.

3 Q Okay. Mayor, Mayor Joiner, I've handed to you  
4 what's been marked as Exhibit 18.

5 A Okay.

6 Q And it is a document entitled "City of Kemah,  
7 Texas, Position Titles, City -- City Building Official."

8 A Okay.

9 Q Are you familiar with this document?

10 A No.

11 Q Well -- Well, this is a document that was produced  
12 by the City as Kemah 105 through 107 --

13 MR. HELFAND: Okay.

14 Q -- and sets forth the scope of responsibilities,  
15 essential functions, necessary knowledge, skills, and  
16 abilities of the building official. Is that a fair  
17 statement?

18 A It appears so.

19 Q Okay. So is this something that the City  
20 Administrator would have created or is this something City  
21 Council would create?

22 A No. This would be the City Administrator.

23 Q The City administrator would prepare this?

24 A (NODS HEAD AFFIRMATIVELY.)

25 Q Okay. Do you recall the February 16th, 2022, City

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1 Council meeting where Mr. Meisinger, one of the City Council  
2 members, pointed out that the City had targeted certain  
3 businesses that were permitted and shut them down? Do you  
4 recall that?

5 MR. HELFAND: Excuse me. I -- I object. That  
6 assumes facts not in evidence.

7 Do you recall something like that happening  
8 with Mr. Meisinger saying that at a meeting?

9 THE WITNESS: No.

10 Q Okay. You don't remember any -- any of that  
11 discussion?

12 A No.

13 Q Okay.

14 MR. HELFAND: Let me object that the last  
15 question assumes facts not in evidence, as well.

16 Q So certificates of occupancies in the City of Kemah  
17 are -- are issued to businesses. Correct?

18 MR. HELFAND: Object to form of the question,  
19 calls -- calls for a legal conclusion. Sorry. Object to the  
20 form of the question because it calls for a legal conclusion.

21 THE WITNESS: Do I answer or --

22 MR. HELFAND: If you know the answer.

23 Q You can answer.

24 A Okay. Ask your question again.

25 Q Certificates of occupancy in the City of Kemah

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1 are -- are issued to businesses. Correct?

2 MR. HELFAND: Let me object. That now calls  
3 for a legal conclusion.

4 A It's more than just businesses. Anyone that  
5 applies for a permit, complies with all the documents, then a  
6 certificate of occupancy is issued to say that they are --  
7 they have complied with the Codes and ordinances to the best  
8 of their knowledge.

9 Q Okay. But -- But a -- for a single-family  
10 residence, for example, you don't need to get a certificate  
11 of occupancy in order to occupy your own house.

12 A I believe you do.

13 Q Is that a fair -- Do you have a certificate of  
14 occupancy for your house?

15 A You know, I don't recall. It's been a long time.

16 Q Okay.

17 A And it would have been taken care of by the  
18 contractor.

19 Q But you don't -- you don't -- you don't have  
20 possession of a certificate of occupancy in your house, do  
21 you?

22 A I could.

23 Q You just -- You don't know?

24 A No. It's been twenty years ago.

25 Q So if the building official came over to your house



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1 and said to you, "I want to see your certificate of  
2 occupancy," and -- and you say you don't have it, is he going  
3 to kick you out of the house?

4 A No.

5 Q Probably not. Right?

6 A No.

7 Q Okay. And...

8 MR. KILPATRICK: Let me just talk to -- Go off  
9 the record real quick. Just talk to my client and see if...

10 MR. HELFAND: Sure.

11 THE VIDEOGRAPHER: Off the record at 4:44 p.m.

12 (Break.)

13 THE VIDEOGRAPHER: On the record at 4:50 p.m.

14 Q Okay. Let's see. So if you know, what's the  
15 process for getting permits to -- to make repairs after, you  
16 know, a freeze, for example?

17 A I can't say for sure about the City, but I would  
18 assume that you would get professionals involved and go  
19 through all the areas that need to be covered, documented on  
20 a set of documents, get a seal from a professional and submit  
21 it for a permit.

22 Then make sure the inspections are made and  
23 assuming all the work is done per the documents, then the  
24 certificate of occupancy should be submitted.

25 Then one of the advantages of that is, is when a

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1 professional puts a seal on a set of documents, he's, pretty  
2 much, saying that it complies with Codes and ordinances.

3 Q Okay. So in the -- Back in the February, 2021,  
4 freeze that affected, pretty much, all of Texas,  
5 especially --

6 MR. HELFAND: Object.

7 Q -- these areas.

8 MR. HELFAND: I'm sorry. I thought you were  
9 done. Go ahead.

10 Q The -- Here, let me -- Let me start over. In 2021,  
11 February, 2021, do you re-- you recall the freeze that froze  
12 most of Texas over.

13 A Yes.

14 Q You weren't the Mayor at that time, but at your  
15 home, did you have any frozen pipes burst or anything like  
16 that?

17 A No froze pipes.

18 Q Okay.

19 A Just frozen landscaping.

20 Q Okay. And so did you repair the frozen landscaping  
21 pipes?

22 A Wait. There wasn't any pipes.

23 MR. HELFAND: He didn't say pipes.

24 Q Oh, just frozen plants.

25 A Plants.

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1 Q Plants. Okay. Yeah. I understand.

2 So did you know other people who had broken pipes,  
3 things of that nature?

4 A Really, no. We drove around, when we could finally  
5 get out, and Kemah came through Harvey really pretty well.

6 Q Okay. So -- Or, yeah. Sorry. Not Harvey, not --  
7 not Hurricane Harvey but the -- the freeze --

8 A Oh, the freeze.

9 Q -- of February --

10 A Yeah, yeah.

11 Q -- 2021.

12 A Yeah. You know, again, I just was worried about  
13 myself.

14 Q Okay. Well, do -- do you know what the City's  
15 procedures, policies or ordinance -- ordinances say about  
16 making repairs when there's been an emergency freeze?

17 MR. HELFAND: Objection.

18 A No.

19 MR. HELFAND: Assumes facts not in evidence;  
20 and calls for a legal conclusion. But he's answered the  
21 question.

22 Q Is that something that is in the 2009 Code?

23 MR. HELFAND: Well, let me object. "The 2009  
24 Code" is too vague for anyone to answer.

25 MR. KILPATRICK: Okay. No. I'll -- I'll --

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1 I'll -- I'll clarify. I was also pointing to it.

2 Q Is that also found in the 2009 International  
3 Building Code?

4 MR. HELFAND: Objection. That calls for  
5 speculation.

6 A I don't know.

7 Q You don't know?

8 A No.

9 Q Okay.

10 A Never had to search it.

11 Q Okay. That's a good thing. So -- Okay. Okay. So  
12 if -- if pipes burst in -- in a property and then -- and they  
13 need to be repaired, can the owner make the repair first and  
14 then apply for a permit?

15 MR. HELFAND: Objection, a legal conclusion.

16 A I have no idea.

17 Q Okay. When -- Regardless of -- Well, let's say  
18 that they do make -- and that they apply for a permit, first.  
19 Do they have to do a plan review to make repairs to plumbing?

20 A I have no idea.

21 MR. HELFAND: Objection, legal conclusion.

22 Q You don't know? Okay. Do you know if --

23 MR. HELFAND: Did you get my objection?

24 THE REPORTER: Yes.

25 MR. HELFAND: Thanks.

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1 Q -- the 2009 International Building Code speaks to  
2 that issue?

3 MR. HELFAND: Objection, speculation.

4 A I have no idea.

5 Q Okay. Is that not -- That's not in your  
6 wheelhouse, as far as, you know, being an architect?

7 A I've never had to search it.

8 Q Okay. No. That's fine. That's my question.  
9 Okay.

10 A That's a thick book.

11 Q Yeah. No. I understand.

12 Okay. Do you know if the City has failed -- or has  
13 refused to issue any permits or have plumbing permits for  
14 property that was damaged in that freeze?

15 MR. HELFAND: Objection, call for speculation.

16 A No.

17 Q Okay. And so getting -- getting those permits to  
18 make repairs, that would be something that the building  
19 official would be in charge of?

20 MR. HELFAND: Objection, speculation.

21 A I would assume it would be Walter Gant.

22 Q Oh, Walter Gant?

23 A Yeah.

24 Q Okay.

25 A Through the -- And the building inspector.

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1 MR. KILPATRICK: Okay. I'll pass the witness.

2 E X A M I N A T I O N

3 BY MR. HELFAND:

4 Q Mayor, do you know, one way or another, whether any  
5 of Mr. Placek's properties situated within the City of Kemah,  
6 are or not -- are or are not in compliance with City Code?

7 A Do I know of any?

8 Q Do you know, one way or another, whether they are  
9 or are not --

10 A No, I don't.

11 Q -- in compliance?

12 Okay. If Mr. Placek has previously been advised by  
13 some representative of the City of Kemah that he cannot have  
14 a certificate of occupancy because his building does not meet  
15 Code, whether it's Mr. Placek or any other person in Kemah,  
16 what would you tell that person to do to get a certificate of  
17 occupancy?

18 A I think I just said that awhile ago, but I'll  
19 repeat it, is, is get professionals, architect, mechanical,  
20 electrical, plumbing, engineers, to come out, document what  
21 you have. Okay? And then they need to put a set of  
22 documents together to -- to fix whatever problems might be  
23 out there.

24 And then they should seal that set of documents  
25 stating that to the best of their ability, they've complied

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1 with the Codes and ordinances of Kemah.

2 Then you take that to the City. They review the  
3 set. There may be a couple of things that the engineers  
4 maybe -- not a -- maybe, didn't miss but that the City  
5 requires. So they send the documents back. They fix them.

6 Then it comes back, and if they've been fixed, then  
7 they should issue you a permit. And then make sure that it's  
8 inspected and that it -- it complies with those documents.  
9 And when that's done, the certificate of occupancy will be  
10 issued.

11 MR. HELFAND: Okay. Thank you. I have no  
12 other questions.

13 MR. KILPATRICK: Okay. One, maybe, two more  
14 questions.

15 MR. HELFAND: Sure.

16 FURTHER EXAMINATION  
17 BY MR. KILPATRICK:

18 Q Mayor Joiner, did you know that the plaintiffs have  
19 done all those things you just mentioned --

20 MR. HELFAND: Okay.

21 Q -- and still don't have a permit after over a  
22 year-and-a-half?

23 MR. HELFAND: Okay. Object. That's not true  
24 and that assumes facts not in evidence. So --

25 MR. KILPATRICK: That's not a -- That's not a

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1 legal objection. What's your legal objection?

2 MR. HELFAND: It assumes facts we both know  
3 are not only not in evidence but are not true.

4 MR. KILPATRICK: That's coaching.

5 MR. HELFAND: You can't ask --

6 MR. KILPATRICK: You're telling him that's not  
7 true is coaching your witness.

8 MR. HELFAND: No. I'm telling you. I'm  
9 looking at you, and I'm telling you --

10 MR. KILPATRICK: Oh, you think he can't hear  
11 you?

12 MR. HELFAND: You let me know when it's my  
13 turn to talk and that you're not going to interrupt me.

14 MR. KILPATRICK: Well, I'm doing my best to  
15 try to stop the coaching before you -- well --

16 MR. HELFAND: This gentleman is -- This  
17 gentleman doesn't need any coaching to know what he does and  
18 doesn't know, but he also is not -- You're not permitted to  
19 say something that's untrue and then ask a question.

20 I'm coaching you. Stop telling him things you  
21 know are untrue. It's not the first time.

22 Now, do you have a question for him, as  
23 opposed to a statement?

24 MR. KILPATRICK: My -- I, actually, asked a  
25 question.



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1 MR. HELFAND: No. You said, "Did you know  
2 that this happened?" That's a statement because it  
3 isn't proven --

4 MR. KILPATRICK: That's a question.

5 MR. HELFAND: -- in the records.

6 Show us where that happened and then you can  
7 ask him questions about that. You can't pretend a fact and  
8 say, "Did you know this?"

9 MR. KILPATRICK: We've already shown the  
10 application to him.

11 MR. HELFAND: You want to ask the -- the --  
12 the witness whether he knows if your client is or isn't in  
13 compliance, a question that was already asked, or whether  
14 your client has done those things, then go ahead and ask him  
15 that but don't tell him something.

16 You're allowed to communicate --

17 Q Did you know --

18 MR. HELFAND: Go ahead.

19 Q Did you know that T&W Holdings applied for a  
20 plumbing permit after making repairs after the freeze and  
21 still doesn't have that permit? Did you know that?

22 A They applied for a permit?

23 Q Yes.

24 A I did not know that.

25 Q Okay. Did you know that T&W Holdings applied for

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1 an electrical permit?

2 A Did not know that.

3 Q And did -- Okay. Well, then, I guess, it's also  
4 true to follow that you don't know that they -- T&W Holdings  
5 was actually issued the -- the electrical permit.

6 A Did not know that.

7 Q Okay. Do you know why the City will not issue a  
8 plumbing permit to T&W Holdings?

9 MR. HELFAND: I object, assumes facts not in  
10 evidence that the City will not issue a permit. But --

11 Q You can answer.

12 MR. HELFAND: Do you know whether the City  
13 will or will not issue a permit?

14 THE WITNESS: No. I -- I mean, I don't know  
15 the situation.

16 Q Okay. Well -- And we already looked at this  
17 earlier, but you saw that the short-term rental application  
18 was placed on hold.

19 MR. HELFAND: No. Again, that's not what he  
20 said and that's not what the document says. The document has  
21 the words "On Hold" written on it. There's no evidence in  
22 this case that the short-term rental application was placed  
23 on hold.

24 MR. KILPATRICK: Anyone with --

25 MR. HELFAND: Ask questions.

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1 MR. KILPATRICK: -- common sense would know --  
2 MR. HELFAND: Ask --  
3 MR. KILPATRICK: -- that that means it's on  
4 hold.  
5 MR. HELFAND: No.  
6 MR. KILPATRICK: Okay.  
7 MR. HELFAND: We're in Court. We're in Court.  
8 MR. KILPATRICK: Well, he --  
9 MR. HELFAND: Your common sense --  
10 MR. KILPATRICK: Then -- Then -- Then you can  
11 cross me.  
12 MR. HELFAND: -- may not be -- your common  
13 sense may not be his common sense. Ask questions. Don't  
14 talk to him. Ask questions.  
15 MR. KILPATRICK: No. The way it actually  
16 works is I ask questions and then you object and --  
17 MR. HELFAND: Ask questions.  
18 MR. KILPATRICK: -- then you re-direct.  
19 MR. HELFAND: Ask questions. Don't make --  
20 MR. KILPATRICK: That's what I --  
21 MR. HELFAND: -- statements.  
22 MR. KILPATRICK: You -- You don't -- I'm not  
23 going to listen to what you tell me to do.  
24 MR. HELFAND: I know.  
25 MR. KILPATRICK: I follow the Rules.

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1 MR. HELFAND: I know. That's unfortunate, but  
2 you've made that clear.

3 MR. KILPATRICK: Well, no. I'm glad. I'm  
4 really glad that I don't have to.

5 MR. HELFAND: Ask questions.

6 MR. KILPATRICK: Your reputation --

7 MR. HELFAND: Do you have more questions?

8 MR. KILPATRICK: Yes, I do.

9 MR. HELFAND: Go ahead.

10 MR. KILPATRICK: If you -- We'd get through  
11 much --

12 MR. HELFAND: Just ask a question.

13 MR. KILPATRICK: Get through it much faster  
14 if --

15 MR. HELFAND: Don't make comments to me.

16 MR. KILPATRICK: -- you wouldn't interrupt me.

17 MR. HELFAND: Just ask a question.

18 MR. KILPATRICK: You done?

19 MR. HELFAND: If I'm done, I'm leaving. Do  
20 you have another question?

21 MR. KILPATRICK: I'm -- I just don't want to  
22 interrupt you again.

23 MR. HELFAND: Do you have another question?

24 MR. KILPATRICK: Just -- Just going on --

25 MR. HELFAND: Don't --

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1 MR. KILPATRICK: -- and on and on.

2 MR. HELFAND: You know, what? Act like a  
3 professional adult. Do you have another question?

4 MR. KILPATRICK: Yes, I do.

5 MR. HELFAND: Now's the time to ask.

6 Q Okay. Mayor Joiner, you saw the document we looked  
7 at earlier, the short-term rental application. Correct?

8 A I did.

9 Q You saw the words "On Hold," on the front of it.  
10 Correct?

11 A I did.

12 Q And you saw the words say, "Needs change of  
13 occupancy."

14 MR. HELFAND: No. It says, "Needs change  
15 OCC."

16 Q Well, anyone with common sense knows that means  
17 change of occupancy, if anyone --

18 MR. HELFAND: Or, maybe, it stands -- Maybe  
19 "OCC" stands for something. Again, you're not testifying.  
20 Ask questions.

21 MR. KILPATRICK: I'm not asking you a  
22 question, and I don't want your side-bar comments, either,  
23 but...

24 MR. HELFAND: Well, you -- Here's the thing.  
25 You can't make a comment like, "Anyone with common sense

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1 knows," and then say your opinion of something; and then say,  
2 "But I don't want you to tell me what you think about that."  
3 Just ask questions like you were in Court.

4 MR. KILPATRICK: And just make objections --

5 MR. HELFAND: Yeah.

6 MR. KILPATRICK: -- in accordance with --

7 MR. HELFAND: I'm telling you right now.

8 MR. KILPATRICK: -- the Rules.

9 MR. HELFAND: Stop speechifying.

10 MR. KILPATRICK: You're -- You're the only one  
11 that's still --

12 MR. HELFAND: Do you have another question?

13 MR. KILPATRICK: You done?

14 MR. HELFAND: One more time, and we're walking  
15 out the door. Do you have another question?

16 MR. KILPATRICK: Oh, no. Yeah, I do.

17 MR. HELFAND: All right. You do that again,  
18 and we're done. You're not going to talk to me like that.  
19 That's unprofessional and rude.

20 MR. KILPATRICK: I didn't say anything.

21 MR. HELFAND: Yes, you did. Do you have  
22 another question?

23 MR. KILPATRICK: Yes, I do.

24 MR. HELFAND: It's on the record. When you  
25 say, "I don't say anything," you're on video, and you're on

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1 the record of what you said.

2 Okay. Ask your question.

3 MR. KILPATRICK: Oh, I know. Yeah, I know  
4 that.

5 MR. HELFAND: Ask your question.

6 MR. KILPATRICK: I paid for it.

7 Q So, anyway. Sorry for the distraction.

8 MR. HELFAND: Ask your question.

9 Q Let's see. Get back to where I was.

10 Okay. Did you know that T&W Holdings applied for a  
11 permit for the deck with engineered drawings attached to it,  
12 and the City still has not issued a permit for that?

13 MR. HELFAND: Excuse me. Object to that.  
14 Assumes facts not in evidence.

15 Do you know whether that happened?

16 THE WITNESS: No.

17 Q Okay. And when you had the -- that meeting at the  
18 restaurant with Matt Placek, you didn't tell him that he  
19 needed to get a permit for the deck, did you?

20 A I don't think we got into that level or anything  
21 else. Basically, I -- I said before, he wanted to get a  
22 meeting together, everybody, and I did that and the meeting  
23 didn't happen.

24 MR. HELFAND: And my objection was, assumes  
25 facts not in evidence that there was a discussion about the

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1 need for a permit or the deck at all.

2 Q And one last question. When making repairs to  
3 plumbing that's already been installed in the building,  
4 there's no need to have -- have a plan review to make repairs  
5 to plumbing. Correct?

6 A I don't know what the requirements are.

7 Q You don't know.

8 MR. KILPATRICK: Okay. I'll pass the witness.

9 MR. HELFAND: Thank you. We'll reserve all  
10 the rest of our questions for another time. Thank you,  
11 Mr. Mayor.

12 THE VIDEOGRAPHER: Ending deposition at  
13 5:06 p.m., with Card 3.

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[illegible]

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1 I, CARL JOINER, have read the foregoing deposition and  
 2 hereby affix my signature that same is true and correct,  
 3 except as noted above.

4 \_\_\_\_\_  
 5 CARL JOINER

6 THE STATE OF \_\_\_\_\_:  
 7 COUNTY OF \_\_\_\_\_:

8 Before me, \_\_\_\_\_, on this day personally  
 9 appeared CARL JOINER, known to me (or provided to me under  
 10 oath or through \_\_\_\_\_) (description of identity  
 11 card or other document) to be the person whose name is  
 12 subscribed to the foregoing instrument and acknowledged to me  
 13 that they executed the same for the purposes and  
 14 consideration therein expressed.

15 Given under my hand and seal of office this \_\_\_\_ day of  
 16 \_\_\_\_\_, \_\_\_\_\_.

17 \_\_\_\_\_  
 18 NOTARY PUBLIC IN AND FOR  
 19 THE STATE OF \_\_\_\_\_  
 20  
 21  
 22  
 23  
 24  
 25

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1 THE STATE OF TEXAS:

2 COUNTY OF HARRIS:

3  
4 I, Sheila J. Nieto, a Certified Shorthand Reporter  
5 in and for the State of Texas, certify that the statements in  
6 the caption hereto are true; that the above and foregoing  
7 answers of the witness, CARL JOINER, to the interrogatories  
8 as indicated were made, before me, by the said witness after  
9 being first duly sworn to testify the truth, the whole truth,  
10 and nothing but the truth, and same were reduced to  
11 typewriting under my direction; that the above and foregoing  
12 statement, as set forth in typewriting, is a full, true, and  
13 correct transcript of the proceedings had at the time of  
14 taking said statement.

15 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this,  
16 the 5th day of August, 2022.

17 

18   
19 Sheila J. Nieto, Texas CSR 1676  
20 Expiration Date: 11/30/2023  
21 Carol Davis Reporting,  
22 Records & Video, Inc.  
23 Firm Registration No. 47  
24 7838 Hillmont  
25 Houston, Texas 77040  
Telephone: 713.547.5100  
Fax: 713.647.5157

**EXHIBIT 9**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON COUNTY

T&W HOLDING COMPANY, LLC; :  
PALAPAS, INC.; AND IT'S FIVE :  
O'CLOCK HERE, LLC; :

Plaintiffs; :

v. : Civil Action No. 3:22-cv-7

CITY OF KEMAH, TEXAS; :

Defendant. :

AFFIDAVIT

I, Sheila J. Nieto, do hereby certify that I was the officer before whom the oral deposition of CARL JOINER was taken on July 21, 2022.

I do hereby certify that on \_\_\_\_\_.

\_\_\_\_\_ The signature page of the deposition, along with a condensed copy was submitted to the witness to obtain his signature thereon.

\_\_\_\_\_ The original deposition was submitted to \_\_\_\_\_ for examination and signature.

\_\_\_\_\_ Notification was given to \_\_\_\_\_ that the original deposition given in the above cause was complete and ready for examination and signature at the offices of Carol Davis Reporting, Records & Video, Inc., within thirty days of said date.

\_\_\_\_\_ More than thirty days have elapsed since the submission. The original deposition, unsigned, together with all exhibits, is being forwarded to \_\_\_\_\_ on \_\_\_\_\_.

\_\_\_\_\_ More than thirty days have elapsed since the submission of the original deposition and it has not been returned to the offices of Carol Davis Reporting, Records & Video, Inc.

**EXHIBIT 9**

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1        \_\_\_\_\_ The original deposition has been signed or the  
2        original signature page was signed and  
3        notarized. The attached page (s) contains  
4        changes, if any, made by the witness and the  
5        reasons therefore. The original deposition,  
6        together with all exhibits, is being forwarded  
7        to \_\_\_\_\_ on \_\_\_\_\_.

8        That a copy of this Affidavit was served on all  
9        parties shown herein, pursuant to information made a part  
10       of the record at the time said testimony was taken:

11       FOR THE PLAINTIFFS:

12       Mr. Brian Kilpatrick  
13       WILSON, CRIBBS & GOREN, P.C.  
14       2500 Fannin Street  
15       Houston, Texas 77002  
16       Telephone: 713.222.9000  
17       Fax: 713.229.8824  
18       Email: bkilpatrick@wcglaw.com

19       FOR THE DEFENDANT:

20       Mr. William S. Helfand  
21       LEWIS BRISBOIS BISGAARD & SMITH LLP  
22       24 Greenway Plaza, Suite 1400  
23       Houston, Texas 77046  
24       Telephone: 713.659.6767  
25       Fax: 713.759.6830  
      Email: bill.helfand@lewisbrisbois.com

      SUBSCRIBED AND SWORN TO, on this, the \_\_\_\_\_ day  
of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Carol Davis Reporting,  
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